

Gender Discourse within the Application of Islamic Law in Aceh, Indonesia

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September 2020

Thesis submitted for the degree of Doctor of Philosophy

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DECLARATION

I declare that the thesis is my own work, and has not been submitted in substantially the same form for the award of a higher degree elsewhere.

Acknowledgements

First of all, thank you Allah (SWT) for all this opportunity and great people in my life. I was born in the heart of Borneo, Indonesia where the highest school we have in the village is a high school. Many of my friends never end up went into higher education, some even has to stop at secondary or high school. Thus, I would like to express a great thanks to the scholarship from the Indonesia Endowment Fund for Education (LPDP) that has enabled me to pursue my childhood dream of doing a Ph.D. I would also like to thank Vice President Jusuf Kalla for providing me with a recommendation for my Ph.D. scholarship.

This thesis would never have been done without the support and kindness of many people throughout my Ph.D. journey. I would like to say thank you to my Ph.D. supervisors, Prof. Alison Stone and Dr. Shuruq Naguib, for their invaluable support and help. I greatly appreciate their support beyond my thesis project, constructive discussion, feedback and comments on my thesis as well as some other papers I was working on, and their understanding towards me as a 'Ph.D. mama'.

I would also like to acknowledge and thank Dr. Sossie Kasbarian for her guidance and constructive advice in the early stage of my Ph.D. I also would like to express my gratitude to Dr. Vina Adriany who has inspired me a lot and given me much advice about academic work and Ph.D life; Dr. Diane Potts for the discussion about CDA; Dr. Steve Wright for his guidance regarding computer-assisted qualitative data analysis software; Carol Bennett, for proofreading my thesis and giving me some constructive comments; and staff at the Department of Politics, Philosophy and Religion, especially Claire Coxhill and Sheila Constantine. Thank you to Jamie Vegad for all the opportunities and experiences I had with International Office.

This research would never have been possible without the help and support of many people during my fieldwork in Aceh, including those whose names I could not mention due to the need for anonymity, I thank everyone who has helped and participated in the research. I thank friends in Indonesia, Apriyatie and Harun, ka Ica, ka Bibah, Rachma, ka Fiat, Elyta, Latifah, Meta, Nancy and all my Chevening friends, especially Kanti and Irma. I thank my Bloomberg TV colleague who has always been supportive, Mas Thomas (Alm.), mba Rani, Alia and mba Endah.

I am also thankful for knowing many great friends during my Ph.D. journey, Hailey, Yunxia, Ana Porroche-Escudero and Choon Key are just a few of many people who have been great to me. Luciana Mendes, my Ph.D. mama buddy, thank you for being a great friend to discuss our theses and most importantly as someone who shares the same experiences of doing a Ph.D. and having a baby at the same time.

I am thankful to all these people who have become a family to me. To Gilang, Bu Ami and Pa Gatot for being such a nice family for me, supporting and helping me in so many ways. To Janet and Mark Wilson, Haidar and Keith whom I have known since my master's degree here in Lancaster, and who have become like a very close family to me now.

I would like to thank a very special and most visionary woman, who was never educated to university level but believed that her children should do. I have always said to her that her 'little daughter' will one day study to Ph.D. level abroad. To my mother, Maskaya, for her bravery for sending me out of the village at 11 years old so I could have a better education. Great thanks also to all my family who are always there for me, supporting me and caring for me; my father Firmansyah, my brothers and sister, Hasan Basri, Husin Ansari, ka Trie, Mulia Sri Wahyuni and mas Arie, my nephews and niece, Habibie, Icha, Kenzo, Sidqi, Titan and Dede Alif, as well as my in-laws: David Mitchell, Peter Welfare, Sabrina, Matt, Henry, Charlene and Graeme. I thank my mother in law, Diane Lord, who I feel lucky to call Mum and who has been there for me and helping us by looking after Isaac so I can work on this thesis. A very special thanks goes to my husband, Shaun Welfare, who always believes in me and my capacity in doing anything, as well as my son Isaac Amartya Welfare who always brightens my days and makes me laugh even during hard times.

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Abstract

This thesis is about Aceh, Indonesia, the Northernmost province in Indonesia with special autonomous rights to implement Islamic law, better known as *shari'a*. It examines the discursive practice of the implementation of *shari'a* in Aceh, regarding how men and women should behave.

This research is based on ethnographic fieldwork conducted from August 2016 to February 2017 in Aceh, Indonesia. In analysing the data, this thesis is informed by constructivist grounded theory and critical discourse analysis. This research found that local *shari'a* codification regulates people in various aspects, from public appearance, religiosity, morality and behaviour, as well as mobility and sexuality. It argues that the law is constructed within a patriarchal interpretation and it regulates women more than men.

The finding also highlights the local *shari'a* regulations are aimed at creating what Foucault referred to as the “docile body”, in which the government, through the law and its various *shari'a* institutions, has set certain norms to regulate and control people as well as monitor the practice of *shari'a* to ensure their obedience. Aceh’s *shari'a* also regulates various forms of penalties, including public caning. This research illuminates how this punishment reproduces and sustains the concept of masculinity and gender hierarchy.

The discourse of *shari'a* application in Aceh constitutes expressions of masculinity and femininity and sexuality. This thesis argues this local codified version of *shari'a* promotes the idea of a unified standard model of femininity, in particular how women should be dressed in public.

This thesis also provides alternative views of women’s agency. Agency here is not only seen as a form of resistance, it also considers how women negotiate all the regulations and patriarchal values, but at the same time they create space to destabilise, construct and re construct these norms.

Keywords: *shari'a*, Islamic law; gender discourse; femininity; masculinity

Introduction

The state plays important roles in constructing gender relations and gender parity. It constructs gender ideology within the society through the law, policies and even public institutions. This thesis explores how gender ideology is constructed and how women and men should behave under local *shari'a* law in Aceh, Indonesia.

In this regard, I borrow the definition of ideology provided by van Dijk (2009) who said, “Ideologies are the fundamental beliefs of a group and its members”. According to Van Dijk (2006, p. 116), there are four fundamental characteristics of ideology: (i) a belief system that is (ii) socially shared by members of a collective or group of people (iii) which control and manage other socially shared beliefs (iv) and is gradually obtained or changes over a certain period of time. He argued that, in a socially shared belief system, ideology constitutes social representations that define the group’s social identities and could possibly be developed or changed by members of the group. Thus, the term gender ideology here is referring to gender construction within Aceh *shari'a* law and how it controls people’s appearance and behaviour in public. According to Van Dijk (2006) ideology also determines a set of common cultural values relevant for the society. Hence, this research attempts to examine the general cultural values believed to concern gender in Aceh’s *shari'a* law.

My research is conducted in Aceh province, which lies at the northwestern tip of Sumatera Island, Indonesia. The province was guaranteed status as a special autonomous region following the signing of the peace agreement known as the Helsinki Agreement, in 2005, between the government of Indonesia and the secessionist movement in the province of Gerakan Aceh Merdeka (GAM), literally translated as the Free Aceh Movement. The deal not only ended the conflict that began in 1976 in the westernmost province of Indonesia, it also opened the door for the reconstruction of Aceh’s constitutions and rule of law. It ratified Aceh’s rights of special autonomy to self-govern the province and to re-establish the implementation of *shari'a* law in the region, through the local constitution, *Qanun*, that was enacted in 2002 as part of previous efforts to create peace. The Helsinki Agreement was followed by the Law on Governing Aceh (No. 11/ 2006), which reaffirmed the province’s rights to re-establish the *Qanun*.

In the same year Aceh issued *Qanun* No. 11 (2002), in which some of its points regulated women’s clothing as having to be loose-fitting and not showing the

shape of their bodies. In addition, some regions even banned women from wearing jeans as part of the implementation of *shari'a* law (Affiat, 2011). Given that Aceh gained special status and privileges, including the implementation of *shari'a* law, it is interesting to investigate how this has affected gender ideology within the society.

Before explaining details about the structure of the thesis, I would like to explain the context of *shari'a* in this thesis. In the case of Aceh and Indonesia in general, *shari'a* often refers to Islamic law, and the local codification is often called '*shari'a* law'. As this term is used in everyday conversation as well, in this thesis *shari'a* refers to local codification of Islamic law. However, here I also would like to emphasise the real meaning of *shari'a*, from a language perspective. *Shari'a* literally means 'the way' and it does not refer to a codified law.¹ However, the term *shari'a* is often overused and misunderstood as Islamic law. Wael Hallaq, Professor of Islamic law and Islamic Intellectual History described that much recent literature and reading have distorted *shari'a*, puzzling its principals and its application in the modern day that is highly politicised.² According to Asma Asfaruddin, Professor of Islamic Studies at Indiana University, *shari'a* is best understood as extensive moral and ethical principles based on the two primary sources of Islam that is the Quran and Hadith (saying and practice of the Prophet Muhammad).

Neither the Quran, nor the Hadith are books of law, however both sources provided the main principles for Muslim followers all over the globe. If Islamic knowledge is sourced from these two texts, then why does the practice vary across the Muslim world and society? In order to answer this question, we need to understand how the two sources have been preserved and interpreted until today. The Quran has been preserved in its entirety from the original version, which was originally preserved through memorisation by the prophet and his companions. After the Prophet Muhammad died, his companions compiled the Quran to preserve it and in the present day the Quran, in its entire originality is available anywhere either in the form of a hard copy book or electronic version. Thus, there is no debate regarding the Quran's content, differences only appeared regarding the Quran interpretation (*tafsir*) due to various methods used in interpreting the text (see. Shihab, 1996) The Hadith which is often defined as the prophet's saying and practice, has played a crucial role in

¹ See Asma Afsaruddin: <https://theconversation.com/what-shari'a-law-means-five-questions-answered-79325>

² See Wael B. Hallaq: An Introduction to Islamic law, p.1

interpreting the Quran as scholars often refer to it even though it was not compiled until decades or even centuries after the prophet died. The civil wars and sectarian schisms in the Muslim community after his death caused some groups to try to forge the Hadith for their benefit (Brown, 2009, p.3-4). Thus, unlike the Quran, its authenticity has been one major concern for Muslim scholars until the present day (Brown, 2009). Authenticity has become one of the main reasons that influence various interpretations regarding religious text, as some Islamic scholars or jurists doubted the accuracy of some hadith. As a result, diversity has become the very core values of religious text interpretation, thus codification of *shari'a* which has homogenised and standardised religious text interpretation into a fixed law would omit this heterogeneity.

The codification of *shari'a* or the “Islamization of Politics” (see Buehler, 2016) has transformed authority regarding religious text interpretation which was in the hands of Islamic scholars or jurists, to the state. As this thesis argues (see chapter 4), the state has become a single authority that monopolises religious text interpretation and has transformed it into the so called *shari'a* regulations. In the hand of the state, these have also become political products, especially in a Muslim majority country like Indonesia. It is used by politicians to directly appeal to the constituents and some influencers or groups which have large followers, to gain political support (Pisani and Buehler, 2016).

Previous scholarship about *shari'a* in Aceh mostly focuses on the *shari'a* regulation in general and how the system works, without analysing the text thoroughly. Feener (2014) wrote about how the *shari'a* in Aceh has been formulated as a social engineering project by its architect or agents. His works focus on individuals and institutions involved in creating and designing the regulations as well as their implementation. He discussed some features in *Qanun 11* (2002) that shape *shari'a* in Aceh, such as the concept of *syiar* (activities regarding glorification and promotion of Islamic teaching), *'aqīda* (belief), *'ibādāt* (worship) and the institutions responsible for the reinforcement of *shari'a*, the *shari'a* police or Wilayatul Hisbah (WH). Feener (2014) also discussed the early draft of *Qanun Jinayat*, where Irwandi, the Governor at that time, refused to sign the bill. It later went through some revision and became *Qanun* No. 6 (2014) about Jinayat Law which was passed by the new Governor at that time, Zaini Abdullah. This law is one out of few legal documents analysed in this thesis. Buehler and Muhtada (2016) studied the diffusion of *shari'a*

regulations all over Indonesia from 1998 to 2013 and found it was clustered in six provinces: West Java, West Sumatra, South Kalimantan, East Java, South Sulawesi and Aceh. Regarding the contents, their analysis found that the law regulates collection of religious alms (*zakat*), Islamic micro-finance, fostering ‘proper faith’ and banning sects or groups considered deviant (i.e. Ahmadiyah group), dress codes, alcohol consumption, gambling and prostitution.

Another important aspect of this thesis is about agency. Studies of how women perform their agency within a patriarchal culture and the application of *shari’a* are still very limited. In 2013, Jacqueline Siapno published her work which discussed women’s agency in Aceh. She highlighted women greater roles in society in relation to the local tradition of matrifocality (see chapter 3). However, Siapno also emphasised that her work was conducted between 1992 and 1996, before the application of *shari’a* and when the province was still under violent conflict between GAM and Indonesian Government (Siapno, 2013). In time of war or violent conflict, the volatility of gender roles is a common phenomenon (Pirmasari, 2016), thus under this kind of situation, women often have more space to perform or play more roles on various occasions. A more recent account coming from Afrianty (2015) who wrote about *shari’a* and women in Aceh, particularly local women’s NGOs, agreed with Siapno (2013) that women in Aceh are not passive and silent. Afrianty’s work focuses on local women’s NGOs and local movement and how they used these organisations to fight for equality, civil and political rights, as well as economic and socio-cultural rights. Neither Siapno, nor Afrianty studied the local *shari’a* regulations in detail. During Siapno’s study, *shari’a* had not been implemented officially in Aceh, while Afrianty conducted her fieldwork between 2007 and 2008, not long after the tsunami in 2004 and peace agreement in 2005. It was the time when many international organisations entered the province which had been isolated due to the prolonged war (see also chapter 3). Thus, the codification of *shari’a* was not as extensive as today, because the province was still recovering and started to re-build. This thesis fills the gap by providing a more recent account exploring how women perform their agency in the post-war society Aceh, under the implementation of *shari’a*. This thesis adds to the very limited accounts regarding women’s agency and Islamic law, particularly in Aceh, Indonesia.

This thesis is based on six months’ ethnography fieldwork conducted between 2016 and 2017 in Aceh, Indonesia. Thus, it provided a real account of the application

of *shari'a* in the modern day and how its codification affected the society. I analyse the local *qanun* (local *shari'a* codification) as well as its practice in everyday life.

This research highlights how local *shari'a* codification regulates people in various aspects, from public appearance, religiosity, morality and behaviour as well as mobility and sexuality. The findings also highlight how local *shari'a* regulations aim to create what Foucault refers to as the “docile body”, in which the government through the law and its various *shari'a* institutions has set certain norms to regulate and control people as well as monitoring the practice to ensure people’s obedience towards the law. This thesis also highlights how women negotiate their identity to perform agency, which helps them to the construct and reconstruct the norms.

Overall, this thesis highlights the practice of *shari'a* in modern day, particularly in Aceh in Indonesia. The codification of *shari'a* has become the main character of the contemporary practice, in which the state or government plays the most significant roles to interpret and codify religious text and monitor people’s behaviour.

Structure of the thesis and Intended Reader

In brief, this thesis consists of six chapters. Chapter 1 explores background of the research, by highlighting the history of conflict in Aceh that lasted for almost 30 years, and efforts made to solve it, including giving the province an autonomous right to implement *shari'a*. I also elaborate on gender discourse in Aceh particularly related to the concept of national identity and post-conflict negotiations. In this chapter I also highlight how this thesis was informed by feminist post-colonial theory and I use the term ‘Indonesian feminist’ to describe my position. Chapter 2 explores the research methodology used in this thesis. It highlights the ethnography approach I used, type of data collected, and analysis utilising computer assisted qualitative data analysis (CAQDAS) NVivo; and describes details of how the thesis is informed by constructivist grounded theory (CGT) and critical discourse analysis (CDA). In chapter 3, I analyse women’s position in Aceh society within traditional matrifocal culture and the historical context from the sultanate era, the colonial period, through to the present day, which was also affected by the prolonged conflict and tsunami disaster in 2004. Thus, this chapter provides the historical background that influenced gender construction in Aceh. Chapter 4 explores gender construction in local *qanun*

and its practice in everyday life. In this chapter, I highlight gendered regulations within some local laws analysed in this thesis and how they are practiced in the society. Thus, this chapter provides details of gender ideology of how men and women are expected to behave in Aceh under local *shari'a* regulations and its discursive practice. The public caning ceremony as a form of punishment regulated in local *qanun* will be discussed in chapter 5. In this chapter, I argue that the ceremony maintains and disseminates control over women's bodies and at the same time contributes towards the production and re-production of the concept of masculinity and gender hierarchy. This chapter also highlights the legacy of colonialism within the application of Islamic law, particularly regarding the practice of corporal punishment. Chapter 6 demonstrates the concept of agency in subaltern studies and how women in Aceh perform their agency. Thus, this thesis also aims to provide an alternative account regarding women's agency, how it is performed and could be understood within different frameworks and cultural backgrounds. Finally, chapter 7 provides the conclusion of the thesis.

This thesis is intended for those who are interested in the study of gender and Islam, and the practice of *shari'a* outside the Middle Eastern context, which in this thesis is Aceh, Indonesia. In the last decades, the implementation of *shari'a* has emerged in many countries across the globe, especially in the Southeast Asia. Aceh first introduced *shari'a* in 2002, some regions like Kelantan in Malaysia also introduced *shari'a*, and in May 2019, Brunei Darussalam announced a strict *shari'a* penal code with some harsh punishment, such as stoning to death for adultery and homosexuality, and amputation for theft. Thus, this thesis provides an ethnography based research regarding the implementation of *shari'a* in Aceh, Indonesia. My work highlights gender constructions within the law, how *shari'a* is practiced in the society and how women manage to perform their agency within the society and Islamic tradition that is often seen as patriarchal and denying women's agency. This thesis could also be read by those interested in post-colonial theory and the legacy of colonialism with regard to the implementation of Islamic law, particularly in the case of Indonesia.

Chapter 1. Gender, Conflict and National Identity in Aceh: Background and Research Questions

In 2002, the northernmost province of Indonesia, Aceh officially declared the application of Islamic law in the region. This declaration did not come without any trigger, Aceh had experienced prolonged violent conflict between GAM and the Government of Indonesia for almost three decades. In order to end the war, the Indonesian Government granted Aceh special autonomy status in 1999, which was later followed by the declaration of *shari'a* law by Aceh's Governor, Abdullah Puteh. This announcement was followed by the codification of *shari'a* in which *Qanun* No. 11 (2002) about religious affairs, worship and religious symbols became the very first bill passed. This first law mentioned various aspects, including regulation of people's religiosity, public appearance and establishment of the *Shari'a* Police, known as WH, as the institution responsible to reinforce the implementation of Islamic law in the society. Since then, the application of Islamic law in Aceh has often been in the spotlight due to the increasing of vigilante acts in the name of reinforcing *shari'a*, and the brutality of public caning as punishment and discriminatory towards women.

In fact, Islamic law is often portrayed as a law that controls people's bodies and morality, and implements harsh corporal punishment to those who breach it, by caning, amputation and death by stoning. Islamic law is also often described as oppressive towards women, and controlling their bodies so they have no autonomy. It is even called misogynist and hostile to women.³ Thus, saving Muslim women from their oppressive men, culture and religion has been the narrative since the colonial era. The veil, for instance, is described as oppressive and this has brought about the narrative of unveiling as a means to liberate them (Ahmed, 2011, Rich, 2014, Fanon, 1965).

This chapter provides a brief historical background of violent conflict in Aceh and how it has sparked a stronger sense of Islamic identity. In brief, this chapter will be divided into four main sections. Section one provides a brief historical background of the Aceh conflict and its landscape, and how Islam and the religious leaders (*ulama*) played significant roles within the society. The next section will discuss gender discourse in Aceh. There are two fundamental fields upon which this thesis draws: gender and national identity (section 1.2.1) and gender and post conflict

³ See: <https://womenintheworld.com/2016/04/07/passionate-debate-erupts-over-the-future-for-women-in-islam/>

(section 1.2.2). These were chosen following many previous studies about nationalist movements in war and the aftermath, particularly in Aceh. This helps me in exploring current literature in this study, and to locate this research within the existing scholarship in this field. It also helps to see how this research will be different from other work, in order to fill the gap in these particular studies. The fourth section will focus on the use of postcolonial feminist theory and the concept of the third world feminist, which will lead to a discussion as to why I use the term 'Indonesian Feminist' in this research. The last section will end this chapter by highlighting the research questions.

1.1 From a Conflict Zone to Special Autonomy

To begin with, in this section, I will provide some basic historical information about Aceh and the landscape of conflict in the region, as well as the connection between politics and religion within it. As previously mentioned, Aceh is the westernmost province of Indonesia, situated in the Northwest of Sumatera Island, with an area of approximately 56,770 square kilometres.

The conflict dates to 1976 when Hasan Tiro established the Free Aceh Movement, a secessionist organisation aimed to fight for independence in Aceh and build a separate state from Indonesia. However, in Aceh history, GAM was not the first separatist movement in the province, as, in 1953, Daud Beureu'eh, the chairman of Persatuan Ulama Seluruh Aceh, or All-Aceh Ulama Association (PUSA), formed Darul Islam to seek autonomy and the implementation of *shari'a* (Aspinall, 2006, Bertrand, 2004). *Ulama* is the word used for an Islamic religious leader, who is generally respected by Muslims, particularly in Aceh. According to Fauziyah (2014), *ulama* comes from 'alima-ya'lamu-'ilman, in Arabic which means a recognised scholar who has deep and wide knowledge of Islamic religious texts.

The Darul Islam movement, which literally means Abode of Islam, was created as a reaction against the Indonesian government, which did not implement Islamic rules as the nation's legal constitution, as was believed by the Acehnese to be their common goals during the war against Dutch colonialism (Aspinall, 2006). Before establishing Darul Islam, in the late 1940s, Daud Beureu'eh, together with the urban youth movement, which shared the same idea of creating an Islamic state, took control of the Acehnese to join the struggle against Dutch colonialism in Indonesia

(Bertrand, 2004, Kell, 1995). However, after Indonesia gained independence in 1945, the country rejected the implementation of Islamic law. Instead, Soekarno, Indonesia's first president, chose to adopt Pancasila which promoted pluralism as the national ideology as the basis of the state, which made the Acehnese feel their struggle had been betrayed (Aspinall, 2006, Bertrand, 2004, Malley, 2001).

Given that some movements in Aceh were led by religious leaders, it is important to recognise their power in gaining public support and mobilising the masses. The role of *ulama* was not only respected, but had also played an important role within society and in Aceh politics since the nineteenth century (Milallos, 2007). According to Fauziyah (2014), although *ulama* is a neutral word which could be associated with either a male or female religious expert, in fact narratives about *ulama* are predominantly male. She argued male domination in this context affected the interpretation of religious text, which could lead to a gender bias understanding that accommodated patriarchal interpretation and the marginalisation of women.

In the Aceh context, *ulama* (predominantly male) led some guerrilla movements to fight against Dutch colonialism, as well as the Japanese and Indonesian government, from 1940 onwards (Milallos, 2007). According to Shaw (2008), the fact that the *ulama* managed to gain public support and lead the struggle to fight against the foreign power, reflects the significance of religion to the movement's ideology. Islam was the point of commonality and used as an identity.

During the war, some efforts made by the Government of Indonesia to bring an end to the conflict in Aceh continued, by giving the region special autonomy status and renaming the province Nangroe Aceh Darussalam, which literally means Aceh land of peace. Huber (2008) argued that the special autonomy given at that time was not fully implemented; however, it gave the province rights to implement *shari'a* law. On 15th March, 2002, coinciding with the first day of the Islamic year of 1423, the Governor of Aceh province, Abdullah Puteh, officially declared the beginning of implementation of *shari'a* law.

As a matter of fact, formalisation of *shari'a* was not one of the goals of GAM when it was first founded by Hasan Tiro, as he sought Aceh's independence from Indonesia (Aspinall, 2007). In one of his speeches Hasan Tiro highlighted how "colonialism, either by white, Dutch, Europeans, or by brown, Javanese Asians is not acceptable to the people of Aceh Sumatra" (di Tiro, 1984; p.16). However, it cannot be denied many of the military leaders in GAM were Darul Islam veterans and

members of its first cabinet had family ties with Darul Islam supporters (Aspinall, 2007). Furthermore, in some of their propagandist narrative, GAM did not only emphasise Aceh's past glory and Javanese tyranny over them, but also called their struggle against the Government of Indonesia a "religious duty" (Aspinall, 2007; p.253).

A few years after GAM was established, in 1979, many GAM leaders were forced into exile, thus gaining International support, particularly from the United States, Europe and Australia, a key strategy in order to support their movement (Schulze, 2006). Although the group often claimed its goal is Aceh's independence and often distanced itself from being seen as an Islamic group, as they do not want to be affiliated with radical islamic groups or terrorism (See Aspinall, 2007; Kingsbury, 2007; Schulze, 2006), after the Iranian revolution in the 1980s GAM tried to gain support from some Muslim countries. In 1985, the group got support from Muammar Ghaddafi, who provided GAM fighters military training in Libya from 1986 until 1989 (Schulze, 2006). However this support did not last long and was no longer maintained in 1990s (Chalk, 2001). From 1990s onwards, realising western countries crucial roles in the success of the secession in Eastern Europe and the referendum in East Timor in 1999 which give them independence from Indonesia, GAM focused on lobbying western support (Aspinall, 2007). The group tried to bring their case for Independence for Aceh to the United Nation, attracting foreign media and building relationships with International human rights organisations. GAM also intensified its military approach to provoke Indonesian military violent reactions and get International attention towards Aceh conflict (Schulze, 2006).

At the same time, the Indonesian government also tried a different approach in dealing with the conflict in Aceh. Having realised the strong Islamic influence towards Aceh society, in 1999, the Indonesian government granted Aceh special autonomy status, which later on allowed the province to implement *shari'a* law. In response to this, GAM officials and the Prime Minister of the State Aceh Malik Mahmud stated their disagreement towards the imposition of shari'a law in Aceh by Indonesian government: "GAM's struggle is motivated by and based on independence and not on religious issues. Jakarta is merely using syariah laws as a propaganda ploy to deviate public opinion from the real issue of the conflict." (Kingsbury, 2007; p. 166).

Indonesian government strategy could also be seen as an effort to build

Acehnese support towards central government and distance the people from the rebellious group. As said by Malik Mahmud, “The gift [of sharia] was placed at our parliament’s door. Should we accept it or not? If not, we could be seen Anti-Islam, but accepting it means a problem” (BBC, 2015). GAM claimed this unwanted gift of shari’a is part of Indonesian government effort to portray them as a radical Islamic group in front of international community (Miller and Feener, 2010), particularly after September 11 incident.

At the same time, since the collapse of the New Order regime in 1998, religious activism in Indonesia increased and the government’s new decentralisation policy brought about a politics of Islamic identity which was used by some elites to gain support from the people to win the elections (Buehler, 2013). Shari’a regulations become a commodity to win people’s support, particularly in areas with strong Islamic roots. Thus in 2002, Aceh’s Governor Abdullah Puteh, who was seen as a lackey of Jakarta by GAM (See Schulze, 2006), declared the beginning of the implementation of Islamic law.

The introduction of shari’a did not bring an end to the Aceh conflict and only in 2005 GAM finally agreed to end the war by signing the Helsinki Agreement with the Indonesian government. The success of the peace talks was inseparable from the critical situation faced by the province following the tsunami disaster of December 2004, which made peace both possible and critical in order to re-build Aceh. The deal was regarded as one of the most successful peace agreements in the modern age (Pearlman, 2014), as it finally brought peace to Aceh after several unsuccessful negotiations between the government and the rebel group.

Even though GAM initially rejected the shari’a law as their goal and claimed it as Indonesian government effort to deviate public from the real problem of the conflict, when GAM members took control of power and local government in Aceh, they also utilised shari’a to gain people support. As mentioned by Buehler (2013), since 1998 shari’a regulations were often used by political elites to gain support from the people. Thus since then, in Aceh and other regions in Indonesia with strong Islamic roots as well as at the national level, political elites often used religion to lure their constituents in order to win elections.

In Aceh history, the region began to socialise Islamic values and Arab culture in the 8th century (Hurgronje, 1906a). However, the idea to implement Islamic Law in the region only arose in 1939 when PUSA was established by Teungku Daud

Bereu'eh (Noerdin, 2005, p.1-2). *Ulama*, or religious leaders, used Islam as the rhetoric to unite and mobilise Acehnese at that time to fight against the foreign power that was Dutch Colonialism (Reid, 2006). However, according to Siapno (2013), women were never forced to wear the veil until 1999, when '*razia jilbab*' or 'veil raids' were conducted by several groups. Human Rights Watch (2010c) stated that this operation subjected women who did not wear a veil in public to violent acts, such as verbal abuse or having their hair and clothes cut by the groups of male vigilantes who conducted the raids. In 2002, it became a legitimate order, endorsed by the state through local government, following the implementation of *Qanun* No. 11 (2002). Since then, more laws and government orders have been passed to control the female body and women's mobility in public.

Following the introduction of Islamic law in Aceh, local elites also conducted various ways to promote and develop shari'a regulation, such as learning from neighbouring countries like Kelantan in Malaysia and inviting religious scholars from other Muslim countries like Egypt. In 2018, the city mayor of Banda Aceh Aminullah Usman said that, together with local religious leaders, they agreed to conduct a study visit to Saudi Arabia and other Muslim countries such as Brunei Darussalam regarding the idea to open cinemas and permit music festivals/concerts (Detiknews, 2018; Indozone, 2019). At the same time, some other Muslim countries including Brunei Darussalam and Malaysia also conducted study visit to Aceh to learn various aspect or local regulations and institutions regarding the implementation of Islamic law in Aceh. Thus, there has been a continuous transfer of knowledge regarding the application of Islamic law, particularly between Aceh and two neighbouring Southeast Asian countries, Malaysia and Brunei Darussalam.

A growing body of reports and research has been conducted related to the implementation of *shari'a* law and women's subordination in Aceh. The next section will discuss previous research and review the literature regarding gender and *shari'a* law in Aceh. In this research, I follow Fatima Mernissi's standpoint about the context of Islam, in which she says:

Every time I speak of Islam without any other qualification, I am referring to political Islam, to Islam as the practice of power, to the acts of people animated by passions and motivated by interest, which is different from Islam Risala, the divine message, the ideal recorded in the Koran, the holy book. (Mernissi, 2006, p.5)

I believe that, in the context of Aceh and many other religion-associated

conflicts, the religion itself is politicised, and used to justify the acts of certain groups and to gain public support for their actions. The fact that Aceh is a Muslim majority province and known as one of the centres of Islamic civilisation in Indonesia, where Islam has also historically played a key role in society, demonstrates the strong influence of religion in Aceh. However, as argued by Roald (2001, p. 119), “texts are present in their entirety in the body of religious literature, but one tends to choose and interpret texts, intentionally or unintentionally, according to what is compatible with one’s own attitude”. This is the case with Islamic text that is rooted in the holy book, whereby the interpretation of the text tends to be politicised by a certain kind of group to preserve its hegemony. Therefore, this thesis aims to investigate the implementation of Islamic law in Aceh, especially in relation to gender construction.

1.2 Gender Discourse in Aceh: An Overview

Despite all the efforts that have been made to eliminate the gender gap and promote female empowerment around the globe, equality remains, as yet, an unfulfilled goal. In many cultures, the terms ‘female empowerment’ and ‘gender equality’ often conflict with local norms, making them difficult to be accepted. Gender equality is usually linked to the feminist movement, often seen as ‘western ideology’, and perceived as the legacy of colonialism, particularly for many Islamic organisations in Indonesia, as well as the state gender ideology during the 32 years of the New Order era (Blackburn, 2004). It creates an additional barrier, since the term ‘western ideology’ often builds resistance from a society which believes that any kind of colonial legacy, which will be discussed later, must be fought. Strong resistance movements against ‘foreign power’ are usually followed by the re-construction of local identities.

Aceh’s identity, and the source of political trouble in the region for almost 30 years, has been discussed in the works of various scholars, such as Reid (2004), Aspinall (2007), Crow (2010), Thalang (2009), Reid (2004). Others, like McCall (2000), Santoso and Yuniver (2009) studied female GAM combatants, known as Inong Balee, (female widows) (see chapter 2), and their lack of involvement in the peace process. Another scholar, Noerdin (2005), focused on the implementation of *shari’a* law as part of the special autonomy granted to the region in 2002, while

Siapno (2013) discussed female agency in Aceh society within the complex interplay between Islamic belief and practices, indigenous matrifocality and state violence. Siapno's work provides an important account regarding Islamic belief and female agency in Aceh. However, as previously mentioned, her research was conducted before the codification of *shari'a* or before Aceh officially declared the implementation of Islamic law and passed any local *shari'a* regulations. Siapno conducted ethnography fieldwork between 1992–1996, or when Aceh still experiencing violent conflict between GAM and the Government of Indonesia, and the special autonomous rights has not been granted to the province. As mentioned earlier in this chapter, Aceh officially declared the application of *shari'a* in the region after being granted special autonomous rights by Central Government of Indonesia which also gave them rights to pass their own local law in some aspects. Thus, this thesis aims to fill the gap within research about Islamic law in Aceh, in which I will look at some laws, passed after Aceh adopted Islamic law. Like Siapno, this research also employed an ethnography approach, which will be explained in chapter 2.

The next section will review previous research regarding the Aceh conflict, and, as explained earlier in this chapter, the discussion will focus on three fundamental fields, which represent many previous studies on the Aceh conflict. The three categories that will be draws upon are: gender and national identity and gender and post-conflict.

1.2.1 Gender and National Identity

This subsection will seek to explore previous research and literature regarding gender and the notion of national identity, especially in Aceh. It will begin by highlighting the role of religion as a common identity that is used to mobilise and unite people to fight against a foreign power. The discussion is followed by an exploration of previous studies in this field in order to identify the significance of the research I am conducting. It also aims to determine how my thesis differs from previous studies in order to fill the gap in this particular field.

To begin with, the Aceh conflict is often seen as a form of resistance to fight against a foreign power in which Islam played a significant role to mobilise people. Historically, Aceh had internalised Islamic values into its culture since the 8th century, which was subsequently used by religious leaders to mobilise the society to fight (Hurgronje, 1906a). During the war against the Dutch, religious leaders called upon

the Acehnese to fight in order to defend the nation and religion from the Dutch colonials, referred to as infidels. Islam was used as an identity that united the Acehnese to take up arms and go to war.

In fact, Aceh started to use Islamic values, including restricting women's public appearance or to make the Acehnese identity more visible, after foreign powers began to invade the region. Even though Islamic values have been part of Aceh's national identity for centuries, women were never forced to wear the veil until mid-1999, when it was imposed in response to the presence of the Indonesian military in the region, which used sexual violence to humiliate the local people (Siapno, 2013). In other words, restrictions regarding women's bodies in the name of the enforcement of *shari'a* law aimed to show how Aceh's national identity differentiates it from the rest of Indonesia. Islam was used as a form of resistance and tool to unite the Acehnese to fight against the foreign threat that was Dutch colonialism at the beginning, and the Indonesian government later on.

Noerdin (2005) discussed the political identity of women in Aceh in which she highlighted women's participation in the nationalist movement and in the political stages in Aceh's history. She attempted to understand the struggle of power relations in the construction and deconstruction of nationalism in Aceh, based on Islam, through discourse analysis at three levels: language, institutions and social process, and subjectivity. To analyse discourse in language, she studied a historical Aceh text, *Hikayat Perang Sabil*, written in the 17th century, and another recent publication, written in the 19th century, in order to show women's inclusion in the decision-making process and their involvement in war within the older text and their exclusion in the more recent one. She also examined female domestication as represented in national government policy and local *shari'a* law, which showed how gender discourse was constructed through institutions and the social process. In addition, interviews with women activists aimed to examine how discourse worked at the level of subjectivity. Noerdin (2005) argued that Acehnese women were victims of three main powers: GAM, the Indonesian military forces, and religious leaders or *ulama*.

However, as argued by Lee-Koo (2012), this kind of one-dimensional representation of women as victims reduces their aptitude to perform political agency in the aftermath, by ignoring their various skills developed during insurgency. She also emphasised that seeing women as victims during war means denying their involvement or active participation on the public or political stage. Although, in one

way, I agree that women are often victimised in time of war, particularly in Aceh, it cannot be denied that they also play active roles, either in guerrilla movements or in advocating peace and calling for reconciliation between the warring parties.

In addition, I would argue that Noerdin's work only represents one single perspective, as all the women interviewed in her work were female activists or those who were active in organisations or activities to empower women and support gender equality. According to Shadia Marhaban, the co-founder of Liga Inong Aceh, an organisation aimed to empower women's participation in public, the tsunami disaster of 2004 brought many international aid agencies and NGOs to Aceh to work on short-term based programmes (Marhaban, 2011). Marhaban, who was also the only woman involved in the peace negotiations between GAM and the Government of Indonesia, argued that the situation made women's groups and activists divided as they competed for donors' funding, particularly in economic empowerment projects. It also created disparity between women's groups and activists with the civilians (Marhaban, 2011). Hence, I would argue that women's experiences are diverse, not only during the war, but also in the aftermath, which could possibly make them have different perspectives on the situation in Aceh and the implementation of *shari'a* law. Regardless of their situation as Acehnese women, I believe it is also important to listen to the voice of women from a different variety of backgrounds, not only women activists. Having diverse voices could help to avoid the simplification of all women's experiences the homogenisation of their situation.

Furthermore, Noerdin's work also focuses on women's situation in relation to political circumstances, whereby she did not really put local culture into context. For example, when explaining about a situation after the tsunami disaster in 2004, whereby a group of young men stopped a journalist's car when entering a village in Aceh. The men told the passengers that '*Inong-inong*', which literally means 'women', wanted to talk to them. When they did so, all the men there remained quiet and let the women speak. Noerdin (2005) described this as social awareness, wherein the society trusted women to play an important political role as spokespersons. She also argued that it indicates Acehnese women are ready to get involved in political roles when needed. However, I would argue it is more about Aceh's traditional culture, in which women are highly respected in society. As noted by Hurgronje (1906a), in Aceh culture, in the past, women had high freedom of action and were very knowledgeable about what happened around them. Furthermore, he said:

The women are also the hereditary guardians of old-fashioned words and expressions, the meanings of proverbial sayings and so forth. When enquiring into such matters I have been often told by Acehnese that they must refer to their wives or mothers, and I can say that the latter seldom failed to supply the desired information. (Hurgronje, 1906a, p.371)

It indicates how women were highly respected in Aceh's traditional culture. Hence, I would say that, despite all the new politicised policy enacted in the province, customary values still remain, at least within some communities in society.

Violent conflict in Aceh has affected many aspects of people's lives, including their culture, traditional values and other form of identities. Jacqueline Aquino Siapno, who conducted ethnographic research in Aceh from 1992 to 1996, found varied experiences between women who lived in the cities and those who lived in the villages. There were differences in how Islam was practised by people from villages and those who lived in the city, which affected the re-creation of Acehnese identity and nationalism in relation to state violence; urban women tended to be more conscious of defending their Islamic identity than those who lived in the villages, which resulted in more veiled women in the cities rather than in the rural areas (Siapno, 2013).

According to Siapno (2013), as urban societies face more interaction with foreign people from many different backgrounds, they tend to build stronger resistance and Islamic identity in response to foreign cultures that are perceived as threats. In the case of Aceh, urban women experienced more interaction with the Indonesian government and the economy and met many people of different ethnicities or nationalities who worked at the multinational companies in Aceh, and also the Indonesian military troops. Siapno also emphasised the fact that urban women have more access to information through mass media, whereby so-called 'Westernisation', is spread in society. In addition, according to Siapno, feminism is also seen as the most obvious symbol of 'Westernisation'. She believed all these situations lead to more restrictions regarding urban women's bodies and emphasis on their roles in the domestic space.

Siapno also mentioned that, together with western values, Aceh also showed negative sentiments towards the Indonesian government, which was perceived as 'Java Centris', or prioritising Javanese culture as the nation's identity. Specifically, she mentioned Javanese traditional costume, the *sarung* and *kebaya*, the 'national

dress' for women, which is usually required to be worn at official events, such as university graduation ceremonies. On the other hand, men are not required to wear 'national dress' and usually wear western clothing, such as a shirt and tie. As Siapno mentioned, the female body has become a contested arena to represent one's identity. The Indonesian government made the 'national dress' for women as a national identity, while some groups in Aceh also enforce their women to wear the veil to signify their Islamic Identity and as a form of resistance against Indonesian secular culture. Women's bodies often symbolise the identity of a nation, metaphorically termed the motherland, a country where one belongs and which should be defended.

Women represent the society's honour as they are seen as the symbol of collective identities (Yuval-Davis, 1997). Thus, the society often feels responsible to protect and control women as they are seen as representatives of their communal identities. According to Yuval-Davis (1997) women are associated with the creation of the nation for two reasons: first, regarding their biological nature as the ones who can give birth to the next generation, and second, regarding the society's construction of nationhood. In a similar manner to Yuval-Davis, Mostov (2000) argued in addition to being the "reproducer of the nation", women are also often defined as the territorial markers and property of the nation. For example, the term motherland or mother earth not only associates women with the spirit of collectivity, but also collective territory and collective identity (Yuval-Davis, 1997). Thus, women's bodies are seen as the 'entry' point of invasion, they are targets of enemy attacks, through rape in order to humiliate the society and destroy the nation if they give birth to their enemy's children (Mostov, 2000, Galtung, 1996). In terms of the society's honour, an attack on women's bodies by the enemy means the society has failed to uphold its responsibilities of protecting its own honour, which makes women at risk in times of violent conflict. In the case of Aceh, women's bodies were contested between two powers, the Indonesian government through the enforcement of wearing national dress, *kebaya*, and the local authority which forced them to veil in public.

In addition, according to Siapno (2013), the Indonesian military's approach to the rebel movement in Aceh perpetuated more patriarchal lines within the politics of Islamic resistance in the region. She emphasised that Islam in Aceh would have been less likely to turn militant and more patriarchal if there had been no armed rebellion against the Indonesian state. She explained the co-existent practice of indigenous matrifocal beliefs and Islamic values in Aceh that has lasted for centuries, where

women are equally powerful as men. However, the war between the rebel movements against the Indonesian state reconstructed Acehnese identity into becoming more restrictive, not only towards women's bodies, but also their roles and mobility.

In her work, Siapno underscored how the war reconstructed gender, whereby women's bodies and sexuality were contested sites for both the Acehnese rebels and the Indonesian government. Conflict in Aceh brought about a militant Acehnese rebellion which prided itself upon a strong Islamic identity in resistance to the Indonesian state that was perceived as neo-colonial and a threat to their culture.

Islam and Islamic culture achieved hegemonic status in Aceh, but within this hegemony, there are opposing forms of Islam: on the one hand is the traditionalist Islam practiced syncretically with matrifocal (mother-centred and woman-centred) *adat* or culture. On the other hand, is modernist Islam with strong attempts at purification – the removal of practices such as matrifocal *adat* (e.g. women as head of the family) which supposedly conflict with 'pure' Islam. (Siapno, 2013, p.36-37)

According to the National Commission on Violence Against Women (Komnas Perempuan), rape was used to subjugate women, particularly those who were involved in the rebellion movement (Komnas Perempuan, 2009). In response to this state violence and the existence of military troops in Aceh, many other groups raised and re-constructed Aceh's identity by veiling women and telling them how they should be dressed in public. This was done not only to distinguish them from the state culture that was considered as secular, but also to protect their women from outside threats, including Indonesian military troops.

Although Islamic values have been practised and a part of Aceh culture for centuries, never in Aceh history had women been forced, either by the militants or government, to wear the veil in a public space (Siapno, 2013, p.37). Hurgronje's work described how women in Aceh society at that time did not wear a veil, although there were some who wore a scarf, which was usually used to cover their shoulders (Hurgronje, 1906a). Siapno's ethnographical works were conducted when the province was sometimes under operational military status, in an effort by the government to tackle the resurgence of separatist activity. However, in recent years, for example in mid-1999, as previously mentioned, *razia jilbab* or 'veil raids' occurred in Aceh in order to force women to wear the veil in public and when Aceh passed *Qanun* no. 11 (2002), Muslim women were obliged to wear the veil and banned from wearing tight clothes that could show the shape of their bodies. I would

argue that 2002 marked a significant change in the re-construction of gender ideology in Aceh and, therefore, it is necessary to undertake further study to give a more up-to-date picture than does Siapno.

The implementation of *shari'a* and the *qanun* as rule of law in Aceh, which was subsequently strengthened after the signing of the peace agreement, established a new chapter within the discourse of gender construction in the province. Since then, the control of women's appearance in public has been endorsed by the state, particularly local government. Siapno (2013) acknowledged she was not writing about current political events in Aceh, which meant there was a lack of analysis of recent government policies regarding women. Therefore, this research will try to fill the gap by focusing on the current situation, particularly after the implementation of *shari'a* law in 2002.

1.2.2 Gender and Post-Conflict Negotiations

A second aspect of how gender and power have developed since the 2000s is in relation to post-conflict political negotiations and the near-total absence of women in these. Despite their effort to transform the violent conflict into peace in Aceh, women were still poorly represented in the formal peace negotiations between the Government of Indonesia and the secessionist group, GAM. This exclusion led to failure to address women's interests and their rights in the aftermath.

As a matter of fact, during the insurgency in Aceh, women were actively involved as combatants, as part of GAM's women's military wing, Inong Balee. The rebel group claimed to have around 8,000 women combatants out of a total 26,000 soldiers (McCall, 2000), although the Indonesian Military Forces said that GAM only had around 200 to 300 female soldiers (Santoso and Yuniver, 2009). Despite the different numbers claimed by both sides, it cannot be denied that women were part of the 'nationalist movement' and joined the military struggle with the rebel group.

In 2000, women in Aceh also made their own alternative axes of power by establishing women's movements such as Duek Pakat Inong Aceh (DPIA), or the All Acehnesse *Women* Congress (Siapno, 2013). The first DPIA meeting resulted in a recommendation calling for peace and women's involvement throughout the process. However, their active involvement in military struggle and the peace movement did not guarantee them to be invited for strategic decision-making processes such as the peace talks.

During the Aceh peace process, which was followed by the signing of the peace agreement in 2005, there was only one woman involved at the negotiation table, Shadia Marhaban. She was one out of a nine-member negotiating team from the rebel group, GAM (Herbolzheimer, 2011), who also joined late in the talks (Lee-Koo, 2012). According to Martti Ahtisaari, who acted as head of the mediation team during the peace talks between the Government of Indonesia and GAM, women were barely involved at the negotiation table and their involvement in the process was very limited (Ahtisaari, 2007, Crisis Management Initiative, 2006, Kamaruzzaman, 2008).

Ahtisaari (2007) also admitted that women did not have visible roles at that time, but refused to discuss the reason. Based on my personal interview with the Vice President of the Republic of Indonesia, Jusuf Kalla, who played a key role in negotiating peace in Aceh, at that time there were two elements needing to be at peace, politics and combatants, and, as men were the actors in those two elements, therefore, they were involved in the negotiation process (Personal Communication, 21 Aug 2015). Even though GAM had a women's military wing, the Inong Balee, men still dominated the leadership and strategic positions in the movement, as happened at the negotiation table.

Women's exclusion from the peace process meant them also being left out of many strategic activities in the aftermath, such as the Aceh Transition Committee (Komite Peralihan Aceh/KPA), an organisation for former GAM combatants to help their reintegration into civilian life (Kamaruzzaman, 2008). In addition, Kamaruzzaman (2008) also highlighted that in the Aceh Reintegration Board (BRA), an organisation formed as part of the reconciliation, reconstruction and rehabilitation process, there were only three women involved out of 43 members. She also mentioned that not one woman was included among the 3,000 former GAM fighters who got government compensation for ex-combatants in the first stage.

Although GAM once claimed that women constituted about one third of their guerrilla fighters (McCall, 2000), their large number was not represented in the peace talks and the aftermath. According to the Crisis Management Initiative (2006), women are usually sent back to the domestic space when the war is over. Enloe (2004, p.206) argued that, in the post-war era, where male veterans have returned, they are expected to take the paid jobs, while women are returned to their domestic roles at home or provide support to their husbands. In her work, where she highlighted the case of the post-Vietnam war, "a time fraught with gendered decision" (p. 215). It demonstrates

that the aftermath of war and conflict usually pose massive challenges for women to transform the situation.

Katrina Lee-Koo, in her work *Gender at the Crossroad of Conflict: Tsunami and Peace in Post-2005 Aceh*, investigated the gendered politics of war and peace after the tsunami disaster. She criticised the dominant narrative brought about by many of the foreign NGOs and international news media that emphasised women's vulnerability in conflict-affected communities and represented them as victims. With the exception of Siapno's work (2013), many news stories, NGO reports and studies focused on female victimhood. Nurjannah (2015) studied women's experiences as victims of violence during the implementation of the Military Operations Area (Daerah Operasi Militer/DOM) in East Aceh from 1989 to 1999. An essay by Kay (n.d) also emphasised women's victimhood, albeit acknowledging males as victims or casualties in the Aceh conflict. Kay highlighted the experiences of women who were tortured, raped and silenced during the war. Although it cannot be denied that women are victims of war, particularly in the context of Aceh, we also need to give space and acknowledge women's agency and contribution to the society during the insurgency. The dominant narrative has made the diversity of women's skills and experiences in calling for peace remained unacknowledged (Lee-Koo, 2012).

According to Lee-Koo (2012), the tsunami disaster of December 2004 provided the catalyst to the peace process, but the post-tsunami recovery processes sidelined the post-conflict rehabilitation, which made women's roles during the war further silenced. She claimed the situation also created disparities of assistance for post-tsunami and post-conflict victims, in which most of the international aid was focused on the catastrophe caused by the seismic sea wave.

In addition, regarding the peace process, Lee-Koo (2012) referred to it as being dominated by a masculine agenda that left women's voices and experiences behind, since the negotiation mainly focused on a truce to halt military activities between GAM and the Indonesian army, the creation of special-autonomy status and political power sharing. She also criticised the international community and the European Council, who sponsored the peace talks, as they did not encourage the implementation of the United Nation Security Council (UNSC) Resolution 1325, which calls for women's participation in the peace process and decision-making. Women's absence in this particular situation led to a lack of representation of women-related issues or awareness of the diversity of experiences they had.

1.3 Feminist Postcolonial Theory

This thesis is influenced by feminist postcolonial theory. According to Gandhi (Gandhi, 1998, p.4),

post-colonialism can be seen as a theoretical resistance to the mystifying amnesia of the colonial aftermath. It is a disciplinary project devoted to the academic task of revisiting, remembering and, crucially, interrogating the colonial past.

Gandhi argued postcolonial studies attempt to criticise the cultural hegemony of European knowledge in order to bring non-European knowledge to the forefront. Meanwhile, in terms of feminist theory, Mohanty (2003) discussed how colonialist movements can be seen from Western discursive representation of women in third world countries and the homogenisation of their experiences. She explained that third world women are seen as an “oppressed group”, poor, uneducated, not progressive, tradition-bound, backward, family-oriented and victimised. The universalisation of third world women’s representation and experiences has colonised and set aside their diversities, which has eventually robbed them of their historical and political agency (Mohanty, 2003, p. 39).

Western discursive representation also has been criticised by Pratt (2013) who discussed the case of women in the Post Arab Spring. She argued there are two intersecting discourses that construct women’s representation seen as greatly participating during the uprising but then marginalised in the aftermath. This dominant narrative was built by two discourses: the Euro-centric feminist framework based on the development of the European women’s movement and the neo-orientalist framework where Arab women are seen as victims of eternal Arab Islamic patriarchy (Pratt, 2013). She further argued that, as a result, this framework could lead to the homogenisation of women’s experiences from the region, victimising women and demonising Arab men which later on would open the way for the West to be seen as the rescuer who brings civilisation to the Arab world. It could also lead to Spivak (1988a) view that “white men are saving brown women from brown men”.

By emphasising feminist postcolonial theory, I would like to explain my position as an Indonesian, a country that was colonised by the Dutch for more than three and a half centuries. It means that I am one of the so-called ‘third world’ women, although I reject the term (see discussion later in this chapter), or part of the ‘oppressed group’. However, as a scholar who has studied in a western institution, in

the UK in particular, reading literature and theories mainly written by western scholars or feminists, I am exposed to the European hegemony of knowledge that also influences the construction of my knowledge. I am aware of the possibility that I might be perpetuating this by imposing its values on the interpretation of the situation in my country, particularly Aceh province. Harding (1991, p. 247) refers to this as “the second attempted colonisation of Third World science and technology by one part –the feminist part - of North Atlantic culture”. However, by adding my voice to the various bodies of literature in this field, I could also potentially narrow the unequal power relations between Western and Third World feminist scholars.

1.3.1 Third World Feminist Concepts

In this research, I would like to take Uma Narayan’s third world feminist approach. Even though I disagree with the term, I agree with her approach, which became an important framework in this thesis. In her work, *Dislocating Cultures: Identities, Traditions, and Third World Feminism*, Narayan (1997) used the term ‘Third World Feminism’ to refer to feminists from many different cultural backgrounds or identities who address third world issues. Narayan aimed to criticise western understanding of third world cultures, traditions and women’s experiences.

Narayan discussed Mary Daly’s argument of *sati* culture, or widow immolation, in India, in which she referred to Daly’s standpoint as “colonialist representation [... of third-world traditions]” (1997, p.46). She criticised Daly for her failure to contextualise and locate *sati* culture, which made it appear common practice among all groups in the country and which still afflict Indian women today. Narayan argued that Daly’s work failed to mention that *sati* was never a widespread practice among all groups or castes in India, and is no longer common nowadays. According to Narayan (1997), these problematic representations are caused by lack of understanding of historical, social, cultural and political contexts of third world culture. She also criticised third world men or women who follow colonialist representation of third world contexts. Similar to Narayan, Lazreg (1988) argued that many eastern feminists used western feminist values to judge women’s experiences in their home countries. She criticised the western perspective about Middle Eastern and North African women that tends to make a generalisation and evaluates women’s experiences in this region according to western standards. Lazreg argued that scholars need to understand that the lives of women in third world nations, like those in the

Western hemisphere, are influenced by political, economic and cultural dynamics (1988, p. 98). She called on scholars to learn and understand the set of knowledge produced by indigenous people in order to avoid universalisation of women's experiences, as has been the case of western hegemony, which was also criticised by Mohanty (2003).

Narayan (1997) categorised three different roles encountered by women from a third world background, like me, when assigned within a western context. The first one, the Emissary position or "Cultural Riches" approach is problematic as it seeks to rescue westerners from their hegemonic knowledge of third world culture, which makes it less critical about its own. The second one, is the "Mirror, or Looking Glass to the West", in which third world scholars in a Western context study a culture without having to engage with the indigenous institutions. In this case, third world individuals become a reflection of the West, which ultimately will perpetuate western hegemony and its agenda. The last one is "Authentic Insiders" in which third world scholars also "speak for their culture" (Narayan, 1997 p.142), but are also critical of it. It differs from the mirror role as it allows continuous attention to the third world context and values without reflecting a Western agenda. An insider critic could also avoid misrepresentation and misleading when discussing indigenous cultures. Thus, in this research, I am expecting to adopt this role, especially as I employ ethnography, which will allow me to combine my emissary position as an Indonesian who speaks for our own culture, while also maintaining my critical stance as an academic scholar who is studying and learning about one specific culture.

Like Narayan and Lazreg, I appreciate and respect multiculturalism and I do not want to generalise or universalise the experiences of women in Asia and Africa with those in the US or other European countries. However, I reject use of the term 'Third-World feminist', which Narayan was also concerned about but still adopted to describe herself, a woman who engages with and is concerned about feminist issues in third world countries. My rejection is more about the use of the term 'third world', which I find problematic. According to Wolf-Phillips (1987) and Tomlinson (2003) it was initially used to refer to non-aligned countries during the Cold War, those who were not part of the West or Communist groups, and it also refers to a group of poor countries. Tomlinson (2003) also highlighted how a report by the Independent Commission on International Development Issues, widely referred to as the Brandt Report, published in 1977, used the terms 'Third-World', 'South' and 'Developing

Countries' to refer to poorer countries where people were "pre-occupied solely with survival and elementary needs [... and faced] total deprivation" (Tomlinson, 2003, p:313-314). I would argue the term is not only problematic, but also no longer relevant to use now, particularly to refer to Indonesia.

My rejection of this term is related to various aspects. First, I regard it as an acknowledgement of the global hierarchy of power, as the First World is generally associated with more developed and wealthy countries, such as the United States, the United Kingdom and other European countries, while the Second World refers to former Communist countries such as Russia and China. Secondly, I do not want to follow the western belief that African or Asian countries, like Indonesia, are underdeveloped and poor. As a matter of fact, Indonesia is part of the Group of Twenty (G-20) countries, an international forum of 20 major economies in the world. According to *The Times of India* (2015), together the G-20 member states account for about 85% of the world's gross domestic product (GDP). In addition, the World Bank also classified Indonesia in the top ten of the world's largest economies in terms of purchasing parity power, and economic growth remains promising following government focus on building more infrastructure facilities and providing more social assistance programmes in education and healthcare (The World Bank, 2015). In this regard, I would also like to highlight that I use the term G-20 only to emphasise Indonesia's economic power in the world. Lastly, instead of using the term 'Third World' feminist as my identity, I prefer to see myself specifically as an Indonesian feminist, as I also believe that Asian countries are diverse and women's experiences in this region cannot be generalised or homogenised.

1.3.2 The Indonesian Feminist

Indonesia is known for its diversity, stretching from Sabang to Merauke with more than 17,000 islands, the country is also renowned as the largest archipelagic state in the world. Hence, the country consists of diverse ethnic, linguistic, religious and belief customs. According to the Indonesian Central Bureau of Statistics, based on the population census in 2010, there are 237 million people, which makes it the fourth largest population in the world (BPS, 2010).

Indonesia has the biggest Muslim population in the world with more than 207 million followers, which makes it slightly different from other countries in Asia and

the Pacific region. According to Wanandi (2002), religion plays an important role within Indonesian society. Although Indonesia is, on the whole, a moderate Muslim country, after the downfall of Soeharto, some radical groups emerged, such as Laskar Jihad (the Jihad Brigade) and Front Pembela Islam/FPI (the Islamic Defence Front); and in some cases or provinces like Aceh, the implementation of Islamic values appears to be rather strict. Although the formalisation of *shari'a* law as the dominant law at the national level has always been rejected, at the regional level the number of local regulations associated with religion has increased (Bush, 2008). Bush (2008) found there to be 78 regional regulations influenced by religion, with 35 ordinances associated with 'morality' issues, including prostitution and gambling. Meanwhile, the other 43 regulations, or about 55%, are associated with Islamic values or *shari'a* law. A more recent number coming from Buehler (2016) who claimed between 1998 and 2013 only there were 443 *shari'a* regulations adopted in Indonesia. The *shari'a*-related regulations range from requiring people to wear Muslim clothing, managing *zakat*, to Islamic knowledge and skills such as the ability to read the holy book, the Quran (Bush, 2008).

According to the Indonesia National Commission on Violence Against Women (Komnas Perempuan, 2009), between 1999 and 2009 only, there were 63 local bylaws in Indonesia discriminating against women, 21 of which are specifically regulating how they should appear in public or are regarding their dress-code (Komnas Perempuan, 2010).

Throughout history, Indonesia has long been known as a moderate Muslim country, wherein the nation's Islamic followers are known as the most tolerant Muslims. People from different religions and beliefs can live side by side in harmony, representing the national motto, *Bhineka Tungga Ika*, which means Unity in Diversity. Furthermore, Indonesia's diverse culture can also be seen from the kinship system in some ethnicities. Despite the patriarchal culture, some regions also uphold a matrifocal tradition as will be discussed in chapter 3. The matrifocal culture demonstrates diversity of women's position and experiences within Indonesian society, and needs to be taken into account when talking about gender discourse. It also signifies the difference between women's experiences in Indonesia and other countries.

By highlighting Indonesia's unique background, I would like to emphasise its distinction from other countries, particularly those so-called 'third world' countries.

Being born in a Muslim-dominated country and raised in a moderate Islamic society has affected my standpoint on Islam, which I would say is further being politicised to preserve some hegemonic power. In addition, Indonesia's multiculturalism and ethnic diversities also influence my acceptance of different perspectives, even within the nation itself.

1.4 Research Questions

Current existing scholarship about Aceh has mainly focused on the source of conflict in the region, the concept of national identity, and gender and the aftermath, as previously discussed. Meanwhile, regarding Islamic law in Aceh many scholars focus on how the system works (see Feener, 2014) or women activists' response (see Noerdin, 2005, Afrianty, 2015). There are still very limited accounts studying the legal text thoroughly, and to my knowledge there is no study yet that combines analysing the text and its discursive practice in everyday life, which is the core of this research. Therefore, this research would like to answer the following questions:

1. How is gender ideology constructed within local *shari'a* law in Aceh?
 - a) How should men and women behave under local *shari'a*;
 - b) How is *shari'a* practiced within the society?
2. How is punishment conducted on those who do not follow the local codification of *shari'a*?
3. How do women respond to *shari'a* regulations and how do they perform their agency within the society?

Hence, this research investigates the law and how it constructs gender ideology within the society. A close reading of the text helps to understand how the Aceh government's expectation about how people are expected to behave in everyday life. Thus, the next question relates to how this law is practiced in everyday life. Analysing the text and its practice provides a foundation to understand the unequal power relations within the discursive practice of *shari'a*, which has often been criticised for marginalising some groups, especially women. The next question aims to investigate punishment for those who breach the law. I wanted to explore if this process goes beyond punishing the body. In saying this, I examine how the punishment shapes and

reshapes gender expectations as well as gender bias, which perpetuate and maintain domination within the system. The last research question aims to explore how women perform their agency. I want to go beyond previous research which has focused on the marginalisation of women within the discourse of Islamic law or in war-torn societies. Instead I want to find out about women's response toward the *shari'a* regulations and how they find space to perform agency.

As mentioned earlier, this research is informed by post-colonial theory which also helped me to develop the research questions above. This research is both critical of Western hegemony of knowledge which often portrays Muslim women as oppressed and subjugated and policies which use religion to maintain control and domination over the people. The two discourses are often seen as having two different strands, however this research suggests that the codification of *shari'a* in modern day Aceh is perpetuating the Western colonial legacy.

Chapter 2. Research Methodology

This chapter discusses the methodological approach in conducting this research, from data collection to analysis. It demonstrates the process of how data for this thesis was gathered and analysed, some negotiations I went through during my fieldwork in response to the dynamic in the field, as well as some challenges I had particularly due to my concern of being a perpetrator of the legacy of colonialism. It is structured in three main sections. The first section provides details about the research approach and types of data, which consist of official government documents, news publications, interviews with local people and field notes, as well as photography and audio recording of events. It also highlights some stages of data gathering and how I gained consent from participants. The second section briefly outlines the use of CGT and CDA within the study. The last section elaborates the researcher's reflexivity, including my understanding about subjectivity vs. objectivity, and the interplay of gender and colonial history in Indonesia. As there is no specific term for gender in the Indonesian language (*Bahasa*) the English term is used. As this term is often related to Western values it created some barriers during my fieldwork. The last section also elaborates my personal background which shaped my knowledge, framework and some of the negotiations I undertook during fieldwork.

2.1 Research Approach and Types of Data

2.1.1 Ethnography

This research employed an ethnographic approach. Davies (2008, p:4-5) defined ethnography as a research practice that involves fieldwork and contact with those being studied for certain period of times and gathering data using mainly qualitative research techniques. Ethnography combines a variety of ways to collect data and information, which involves the researcher's involvement, gathering information through formal and informal interviews, while also observing and investigating documents related to the research topic (Hammersley and Atkinson, 2007, p.3).

The research was conducted in Aceh where I lived for about six months in order to understand the ‘native’⁴ point of view, while also doing observation and a thorough investigation on the rule of law. I stayed there between August 2016 and February 2017, with a three-week fieldwork break from the end of October to mid-November. According to Bernard (2006; p. 382) a break in the middle of fieldwork is an important stage for researchers who are conducting long-term participant observation. He suggested that a break be taken after the researcher has spent three to four months in the field, in order to obtain some distance from the research site and also to reflect on what has been gathered in the first few months and what else needs to be done.

I spent most of my time in Banda Aceh, the capital of Aceh province, with some short visits to other districts and towns, including Aceh Besar, Lhokseumawe, Takengon and Weh Island. During my fieldwork, I developed relationships with local people from many different backgrounds, including those who had been members of the secessionist group, the Free Aceh Movement.

2.1.2 Types of Data

Data were collected from various sources, including document analysis, interviews with local people, field notes, photography and audio recordings from some events during the fieldwork. All data were analysed in the original language, Indonesian, except for my own field notes which were written in English from the beginning. Some data and text in my mother tongue, are translated into English for the purpose of including examples to inform the reader.

I decided to analyse data in the original language, due to my understanding about the process of translation which might change the meaning of words spoken. Not all words can be translated equally or exactly, for example, the Indonesian language does not recognise gender in the third person, it only uses the words ‘*dia*’ to refer to he or she.⁵ Spivak argued that “translation [is] catachresis, the making of the

⁴ Conducted through an ethnographic approach and interviews with local people, which will be discussed further in the following sections in this chapter.

⁵ Most phrases in the Indonesian language are gender neutral, including third person pronouns and kinship terms, so must include an explanation as to whether it is male or female Quinn, George & Kozok, Uli. 2011. *Is Indonesian a non-sexist language?* [Online]. Bahas Kita: Indonesian Language Online Resource. Available:

subject in reparation” (2000; p.20). Her arguments, with which I agree, are based on the fact that some words being translated might not convey exactly the same idea as the original words. Some phrase or specific jargon sometimes cannot be translated literally to another language or may contain cultural meaning or connections (Guo, 2012). Thus, in line with the concept of ethnography, which is to understand the native point of view, I believe that analysing data in the original language helps me to keep connected with the local context, which will be useful in order to understand local values.

However, as Spivak said, “translation is necessary and unavoidable” (Spivak, 2000; p.21), which is also the case in my research because some of the texts and interview data I analysed are in the local Aceh language. Translation is a necessity in order to communicate and share one culture to another, therefore, it is unavoidable. In this research, some texts that were originally in Acehnese were translated to Indonesian by my local contact, when I was in Aceh. Indonesia is a country constituted of many different ethnic groups who all have their own local languages. There is no exact figure of the total number of local languages in Indonesia but, according to Ross (2005), Indonesia is one of the most multi-ethnic countries in the world with more than 300 distinct local languages. Krauss (1992) claims it has 670 languages; and research conducted by the Indonesia Language Agency in 2011 identified 514 distinct languages, though the exact number is estimated as higher, as some regions has not been studied yet (Budiwiyanto, n.d). Indonesian is a national language as well as the official language that must be taught as a compulsory module at school; however, many ethnic groups commonly preserve their local language in

<http://www.bahasakita.com/is-indonesian-a-non-sexist-language/> [Accessed 22 March 2017].. However, according to Jupriono, D 2010. *Selayang Pandang Ketimpangan Gender dalam Bahasa Indonesia. Parafrase*, 10, 33-39., there are a few words and phrases in Indonesian which are gender biased and put men as superior to women, or women as passive actors. For example, the term ‘*wanita simpanan*’ which literally means ‘kept woman’ but the man himself is never referred to as ‘*lelaki penyimpan*’ or ‘the one who keeps the woman’ *ibid*. In addition, some words can be used to refer to male and female, but the female version of these words are only applicable to females Yulaelawati, Ella & Somantri, Cecep 2013. *Bahasa dan Responsif Gender*, Jakarta, Kementerian Pendidikan dan Kebudayaan. For instance, ‘*mahasiswa*’, which means university student, usually refers to all males and females, and it could also mean only male students; however, the female version, ‘*mahasiswi*’, is only applicable for women. In addition, according to *ibid*. local values, social interaction and culture could also determine gender bias in the language.

their daily activities. Acehese is one out of the aforementioned hundreds of local languages spoken in the archipelagic country.

In this study, there are eight photographs of signboards I took in Banda Aceh, as well as some remarks people made during a caning ceremony I witnessed, written in Acehese. I asked my local friends to explain the meaning of the texts on the signboards, while some remarks during the caning ceremony were translated for me during the event. Hence, in this research, all data are analysed in their original language, except those in Acehese, which were translated to Indonesian to help me better understand the text. The analysis and findings will be written in English.

Documents

I will analyse some official documents, including local *shari'a* law or *qanun* and government orders, Governor Instructions (GI), which regulate women regarding their bodies, appearance and mobility. The analysis also includes the instructions of the City Mayor of Banda Aceh, as the capital is the main site of the fieldwork in this research. Those laws are as follows:

1. *Qanun* no.11 (2002) on religious affairs, worship and religious symbols, which was the very first shari'a regulation passed by the government.
2. Governor Regulation (GR) no. 10 (2005) on technical guidelines for implementation of *uqubat* (punishment) by caning;
3. *Qanun* no. 6/2014 about jinayat law, which regulates some acts considered as crimes, including *khalwat* (affectionate contact between an unmarried couple), *Ikhtilath* (free relations between men and women), *zina* (adultery/sexual relations outside marriage), *liwath* (gay relationships between men) and *musahaqah* (lesbianism).
4. GI no. 02/INSTR/2014 about policing cafe and Internet services in Aceh
5. City Mayor Instructions (CMI) nos.1/2015 and 2/2015 about supervision and policing tourist services/recreation/entertainment and internet services, cafés/other similar services and sports facilities in Banda Aceh city.

Documents are gathered from the official government website, except for three Instructions (GI no. 02/INSTR/2014, CMI nos.1/2015 and 2/2015), which are not published on the government website. However, I managed to get an e-copy of the

instructions from the National Commission on Violence Against Women. The three instructions created considerable controversy when released in 2015 and have been generally criticised for discriminating against women as they restrict them from being out at night. The Commission stated that the three regulations are discriminatory and detrimental to women, and could trigger more restrictions to their rights to works and their mobility in public (Komnas Perempuan, 2015). It also claimed that this kind of regulation might spark stigma towards women where those who are still around at night would be seen as having low morality or violating the law. Criticism also came from Indonesia's Vice President, Jusuf Kalla, who admitted Aceh had the right to deal with its domestic affairs, as mandated by its Special Autonomy status, but also questioned the need to impose a curfew for women (Kompas, 08.06.2015; The Jakarta Post, 9.06.2015). Meanwhile, the City Mayor of Banda Aceh, Illiza Sa'aduddin Djamal, who passed the regulation, said that her instructions were just a follow up of the Governor's Instructions, thus, she invited those who did not agree with the regulations to discuss the issue with him (Humas Banda Aceh, 06.06.2015). Furthermore, she claimed the instructions were aimed to protect women, because she believed working in the entertainment industry until midnight is a form of exploitation and makes women vulnerable to harassment. Her arguments were also supported by the Minister of Internal Affairs and religious scholars or *ulama* who saw the regulations as an effort to protect women (Humas Banda Aceh, 06.06.2015; Kemendagri, 09.06.2015).

Previously, in October 2014, Aceh issued *Qanun* no. 6/2014 about *jinayat* law, which regulates some acts that are considered as crimes, including drinking *khamar* (liquor), as well as the aforementioned crimes about acts between two people, which carry a possible penalty of 100 strokes in public (*Qanun* Aceh no.6 of 2014, 2014). According to *Qanun* Article 5, the law is applicable to all Muslims who commit the crimes in Aceh, all non-Muslims who commit crimes with Muslims in Aceh and choose to obey the *Qanun* Jinayat (criminal law) and all non-Muslims who commit crimes that are not regulated in the Penal Code of Indonesia (KUHP) and other criminal codes, but are regulated by the *Qanun* Jinayat (*Qanun* Aceh no.6 of 2014, 2014: p.7).

Interviews with Local People

The ethnographic tradition usually employs unstructured interviews, in which the researcher collects the data through participant observation while also making notes and engaging with the society being studied (DiCicco-Bloom and Crabtree, 2006). Fontana and Frey (1994) described differences between structured and unstructured interviews based on Malinowski's ethnographic works. They argued that a structured interview

aims at capturing precise data of a codable nature in order to explain behaviour within pre-established categories, whereas the latter is used in an attempt to understand the complex behaviour of members of society without imposing any a priori categorization that may limit the field of inquiry. (Fontana and Frey, 1994; p.366)

Thus, they praised Malinowski for immersing himself within the native culture and for his "being there" with them to understand their values (Fontana and Frey, 1994, p:366). In this research, the interview aimed to gain more information about local people's points of view regarding the implementation of Islamic law. The interview method allowed me to be able to listen to different voices that would help to see how agency is being practised by women.

There were two types of interview conducted in this research. The first types were unstructured interviews from the daily activities and conversations I had with local people without making a prior appointment. This kind of interview formed my field notes. The second type of interview was a semi-structured one, for which I made appointments with local people, asking them several questions I had prepared, although the interview sometimes diverged when they also asked me questions. This kind of interview was audio recorded, and I always asked participants to read the participant information form and sign a consent form before the interview. I gave each participant a hard copy of the first and an e-copy of the latter, which I usually sent to their mobile. There were only two participants I did not ask to sign a consent form, as I had met them without making a previous appointment. However, I asked for their consent verbally, informed them about my research and that the interview would be recorded, just as I always did before interviewing all the other participants. In order to protect the participants' interest, safety and confidentiality, I use pseudonyms.

In total, I have conducted 32 recorded interviews, of which 30 participants are Muslim and two are non-Muslim. According to data published by Statistics of

Aceh Province in 2016, there are over 4.8 million Muslims in Aceh, about 99.2 per cent of the population, while the non-Muslim population, which includes Christians, Catholics, Hindus, Buddhists and Confucianists is about 38,000 people in total, or less than one per cent of the total population (BPS Provinsi Aceh, 2016). Thus, I think the two non-Muslim voices are important to see their experiences under a law that is not based on their religious belief and how they negotiate with the regulations and customs in the place where they live.

All recorded interviews were conducted in Banda Aceh, although some of the participants lived in other towns in Aceh, such as Lhokseumawe, Aceh Besar and Takengon. However, they frequently visited Banda Aceh, the main research site of my fieldwork, either for work, business or other activities. The interviews covered a broad range of topics, including their perspective on the implementation of *shari'a* in Aceh, regulations regarding the veil and the partial curfew for women, local *shari'a* based punishment, as well as how the regulations had affected their life. All the interviews were then transcribed in full which allowed me to listen to them in detail. The transcripts were then transferred to NVIVO for coding purposes.

Field Notes

During my fieldwork, I made notes in order to keep records about my experiences and activities. I wrote up my daily interactions with local people, observations and personal experiences during the fieldwork. A researcher's direct participation in a relatively new site or social world and production of written records about her/his experiences and observation are the "core of ethnographic research" (Emerson et al., 2011; p.1). In this research, I followed Adriany (2013; p.72) to write my field notes in English instead of Indonesian, my mother tongue, so I did not need to translate them for the analysis stage.

According to Hammersley and Atkinson (2007; p.142) it is impossible to write down everything about our observational and interview data, hence, it must be selective, dependent on the researcher's main focus. During my fieldwork, I usually wrote down my field notes in my book when I was at home. I avoided making notes directly when interacting with people, to avoid unnatural responses and other disruptions. However, sometimes I typed memos on my phone to write important notes or comments. Holding a mobile phone while talking is common practice in Indonesia, which made it easier for me to sometimes jot down my notes on my

mobile. In writing field notes, according Emerson et al. (2011), there is no single definitive way of doing it, everyone might write about one situation from different points of view, but it is all valuable.

Photographs and Audio Recording of Events

Photography has been used in anthropology for many years, but has recently attracted more researcher attention (Hammersley and Atkinson, 2007). Davies (2008) describes some doubts about the use of visual media as ethnographic data. Visual media is argued as not showing the whole event or situation witnessed by the ethnographer, as it is limited in time and space (Davies, 2008). A photo can only capture one moment at a certain time and one picture cannot show the whole view as its frame is limited. Thus, Davies argued, the ethnographer is responsible to contextualise the picture taken. In order to do so, I would argue it is important that, when analysing photographic data, I need to refer back to the actual setting when and where the photos were taken, what kind of event they related to and who the people in the pictures are.

In this research, photographs aimed to record reality in the field, a natural visual setting, especially as regards events or other phenomena displayed in a public space, in order to analyse how gender discourse is highlighted in public. All the photos used were taken by me during my fieldwork. A total 45 photographs and three series of public event photos will be analysed. All photos were taken from public displays or ads, signboards in public areas, notes in entertainment venues, and daily events and activities. Meanwhile, the three series of public event photos were taken during the Eid Carnival, the National Congress of Mothers organised by Hizbuth Tahrir Indonesia, and a public caning ceremony. This research also utilised audio recording to record the latter two events as well as public seminars of Aceh Women in History and Engaging Men in Women's Empowerment. Each event's audio recording duration ranges from one hour to three hours. The audio recordings were transcribed in full and transferred to NVIVO for coding.

2.2 Approaches to Data Analysis

This thesis is informed by a mixed methods approach to analyse data, from CGT to CDA. I was informed by Charmaz's (2006) concept of CGT, which "consists of systematic, yet flexible guidelines for collecting and analysing qualitative data to construct theories 'grounded' in the data themselves" (2006; p.2). In addition, I was also informed by previous work such as that by Johnson (2011) and Adriany (2013), whose research gave me some insight about collecting and analysing data. Adriany (2013) employed CGT in her ethnographic work, *Gendered Power Relations within Child-Centred Discourse: An Ethnographic Study in a Kindergarten in Bandung, Indonesia*. Meanwhile, Johnson (2011) combined the analytic techniques of CGT and discourse analysis in her work, *When system demands meet site realities in high-stakes literacy testing: A Tasmanian education case study*.

2.2.1 Constructivist Grounded Theory

Charmaz (2006) emphasised that, in constructivist grounded theory (CGT), the researcher must be open to any possibilities in order to be able to learn about the lives of the research participants. She argued that openness is necessary, especially during initial coding, to provide possibilities of new ideas emerging from the data. The first step in employing CGT is coding or naming segments of data, to define what happens in the data (Charmaz, 2006). By saying this, Charmaz highlighted how crucial coding is in CGT to bridge the data and provide an analytic interpretation of the research.

This research employed two main stages of coding, initial coding followed by focused coding. At the first stage, I did a close reading of the data and labelled it to give me an initial lead for its analysis.

Table 2. 1: Initial Codes

No.	Code
1.	Describing Society's Attitudes
2.	Refers to Socio-economic Gap in Indonesia
3.	Describing Lack of Entertainment Places
4.	Refers to Religious Identity
5.	Mentioning Traditional Cultural Institutions

6.	Mentioning Authorities
7.	Defining <i>Shari'a</i>
8.	Disciplining Society
9.	Involving People's Participation
10.	Men's Role and Responsibilities
11.	Women's Role and Responsibilities
12.	Discourse of Past History
13.	Discourse of Female Hero
14.	Discourse of Religious Associated Activities
15.	Arab Values
16.	Different Sentiments regarding 'Gender'
17.	Western Values
18.	Gendered Territory
19.	Supporting and Policing Qanun by Members of the Public
20.	Punishment by Members of the Public
21.	Moral Values
22.	Negotiating Identities
23.	Negotiating Appearance
24.	Negotiating Roles
25.	Performing Resistance
26.	Women's Organisation
27.	Diversities
28.	Exclusion
29.	Mentioning Intimidation
30.	Homogenising Society
31.	Unpleasant Experiences
32.	Politics of Fear (Selling Fear)
33.	Promoting the Idea of the Caliphate
34.	Protecting Women
35.	Public Raid
36.	Mentioning Corporal Punishment
37.	Other Punishment
38.	Empathy towards those Punished

39.	Rape and Sexual Violence Case
40.	Regulating People
41.	Veil as Fashion Trend
42.	Veil as Identity
43.	Veil as Religious Obligation
44.	Women and Public Space

After I finished the initial coding stage, I continued with focused coding, which is more “directed, selective, and conceptual” than the first stage of coding, by “using the most significant and/or frequent earlier codes to shift through large amounts of data” (Charmaz, 2006; p.57). At this stage, similar codes were merged, for example, Corporal Punishment, Other Punishment and Empathy towards those punished were merged into Punishment; and Veil as fashion Trend, Veil as Identity, Veil as Religious Obligation were merged into Veiling. I also followed Adriany (2013) in which at the focused coding stage, some codes were dropped due to insufficient data. In this research, these codes were: Describing Society’s Attitude, Refers to Socio-economic Gap in Indonesia, Describing Lack of Entertainment Places, Promoting the Caliphate Idea, and Describing Public Facilities. The coding process helped to identify the dynamic within the application of *shari’a* in Aceh society.

In addition to coding, memo writing is also an important stage in CGT. It is a space for the researcher to always stay connected with their data, and fosters ideas (Charmaz, 2006), thus it bridges the analysis process, from coding to writing, to help the researcher record their thoughts at any stage during the whole research process. According to Corbin and Strauss (1990), doing research analysis from coding straight to writing and neglecting the process of writing memos will leave some theoretical details unexplored. They argue that omitting the memo writing stage will result in “a less elaborated and satisfying integration of the analysis” (Corbin and Strauss, 1990; p.10). I started writing memos following data collection and continued until completion of this research, as did Johnson (2011) and Adriany (2013).

2.2.2 Critical Discourse Analysis

According to Fairclough (2012, p.6), “discourse is language viewed in a certain way, as a part of the social process (part of social life) which is related to other parts”. It is

often defined as language viewed in relation to social power relations. Discourse is further defined as a form of social practice shaped by situations, institutions and social structures, but which also shapes all these elements, or, in other words, discourse and social life are mutually constitutive, so that discourse can help to produce and reproduce unequal power relations between groups (Fairclough et al., 2011).

In this research, I was informed by Fairclough's approach to CDA. According to Fairclough (2001) social issues and problems are the starting points of CDA. Fairclough used a three-dimensional conception of discourse.

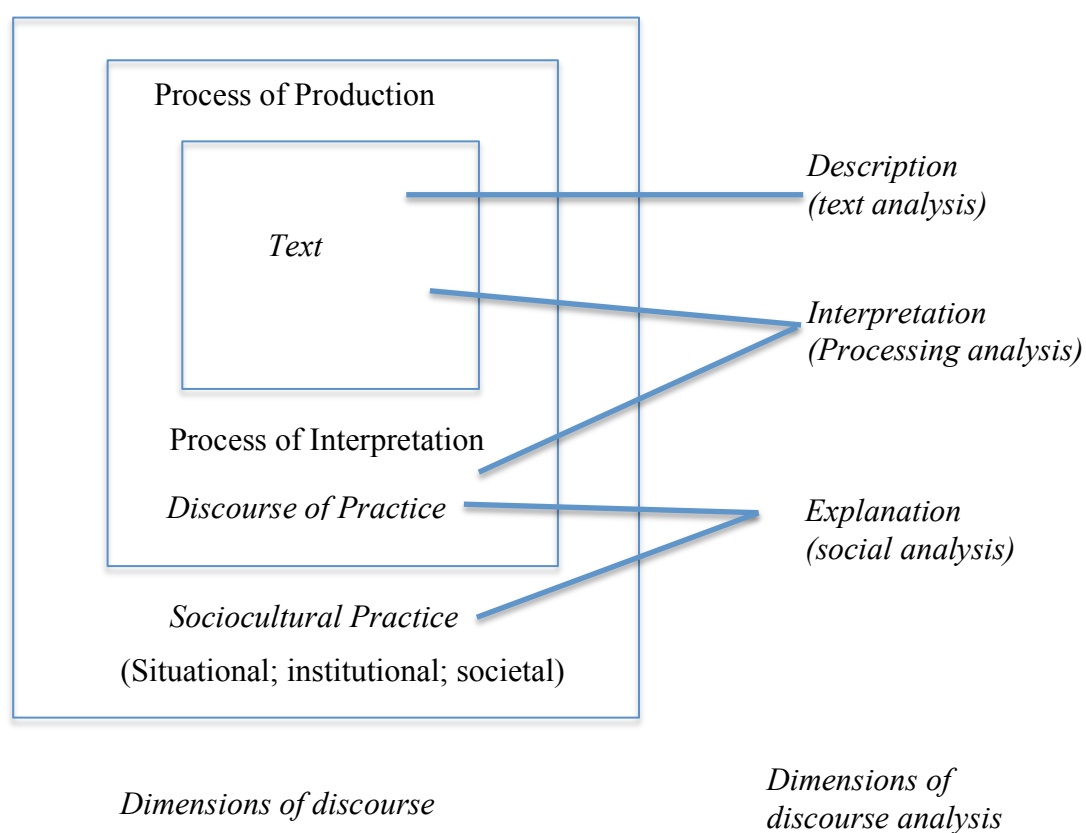


Figure 2.1: Fairclough's dimension of discourse and discourse analysis.

The three dimensions, as can be seen in figure 2.1, are important keys in doing CDA: analysing the linguistic *descriptions* of the text, which could be written and oral; the discourse of practice involving the text production and reception or the process of *interpretation*; and *explanation* regarding the sociocultural practice (Fairclough, 2013). The position of the boxes nesting one inside the other highlights the interdependence of the dimensions, and the continual movement back and forth between different kinds of analysis (Janks, 1997). In Fairclough's dimension of

discourse and discourse analysis above, the discourse practice mediates the text and social practice.

The connection between text and social practice is seen as being mediated by discourse practice: on the one hand, processes of text production and interpretation are shaped by (and help shape) the nature of the social practice, and on the other hand, the production process shapes (and leaves 'traces' in) the text, and the interpretative process operates upon 'cues' in the text. (Fairclough, 2013, p. 94)

Fairclough emphasises the mutually constitutive relations between text, discourse practice and sociocultural practice. In the context of Aceh, for instance, (local) government regulations regarding people's public appearance are often justified in the name of Islam which is at the heart of Aceh's identity. So, the regulation is shaped by the socio-cultural practice and also shapes the social practice today.

According to Van Dijk (2001) the primary goals of CDA is to understand the unequal power relations, of how social power abuse, domination and inequality is performed, produced and resisted in society. CDA is not only interested in the linguistic perspective, but also social phenomena (Wodak and Meyer, 2009). Therefore, in CDA it is important to see connections between text, context and the sociocultural practice in the society. Following Fairclough (2001) definition regarding text, in which he includes many types of semiotic material, from written text, conversations as well as advertisements on billboards, this thesis examines the various texts I gathered during ethnographic fieldwork in Aceh.

I would argue the process of doing CDA is in line with CGT which requires the researcher to always refer back to the data and memo writing process. This practice was also a space for me to analyse the text and see connections between it and the social practice mediated by the discourse practice. CGT requires a close reading of the data which is also in line with CDA, to see the link between text, context and the social practice.

2.3 Reflexivity: Subjectivity vs. Objectivity

My awareness on reflexivity is based on the view that knowledge is situated, socially constructed, shaped and influenced by many elements, such as experiences and personal background (see Davies 2008 cited in Pillow, 2003; Fook and Gardner, 2007;

Jørgensen, 2003). According to Harding (1991), our background influences our beliefs and thoughts, and this would be likely to affect the research. Some backgrounds could also result in more knowledge of certain situations than others (Harding, 1991), which means that our cultural background and previous experiences can yield different perspectives. Fook and Gardner (2007, p.29) argued that “knowledge is also mediated by our own subjectivity”, which means that the researcher’s personal experiences influences the research in many ways, including how it is chosen and interpreted.

Although, many arguments have been built surrounding the discussion of value neutral research, according to Berg (2001), research is seldom value neutral as it is commonly motivated by a personal interest or experience. In a similar manner, Harding (1991: p.159) stated that “research is socially situated, and it can be more objectively conducted without aiming for or claiming to be value-free”. Hence, she proposed the notion of “strong objectivity” which requires the researcher’s reflexivity or self-awareness of her/his situated knowledge. Disclosing the researcher’s motivational factors and background will help readers “to better understand why a research area has been selected, how it was studied and by whom” (Berg, 2001: p.141). According to Davies (2008: p.4) reflexivity

refers to the ways in which the products of research are affected by the personnel and process of doing research. [...] issues of reflexivity are particularly salient for ethnographic research in which the involvement of the researcher in the society and culture of those being studied is particularly close.

Davies explained that, in ethnography, the researcher is part of the research conducted, as, during fieldwork, he/she establishes interaction with people and becomes immersed with the society. Likewise in ethnography, CGT also advocates researcher reflexivity as the researcher’s background and knowledge influences the research (Charmaz, 2006). In brief, this argument has built my awareness that my personal background, knowledge and experience influenced my decision to choose the topic of research and my point of view about the situation.

As mentioned in chapter 1, I am adopting Narayan’s concept of the ‘authentic insider’, as an Indonesian scholar who speak for our own culture whilst maintaining my critical stance. In saying this, I am aware of diversity within various cultures in Indonesia, thus I believe there is a spectrum of ‘authentic insiders’. However, in this context I would like to emphasise my position as an Indonesian Muslim woman. During my fieldwork, I was both seen an insider and outsider. When I met people,

sometimes they asked where I am from? The fact that I am from Borneo Island (more known as Kalimantan in Indonesia) instead of Java brought some proximity with local people as I was seen as the same as them as ‘victims of colonisation’ by Java. At the same time, I was also seen as an outsider due to my research about gender, which is often affiliated with western values, and my educational background as student at a UK university. However, my background as someone who grew up in Banjarmasin, South Kalimantan, also known for its strong Islamic identity and prominent Islamic scholars such as Syaikh Arsyad Al-Banjari, often brought me back as an insider.

My identity and knowledge as an Indonesian Muslim who was born and grew up in a Muslim family and learnt Islam throughout my life, brought my understanding of multiculturalism in Indonesia as well as the importance of religion for people. This position enabled me to understand people’s choices regarding religious devotion, for example, as I discussed in chapter 6 on the veil and *hidayah*. At the same time, my educational background as someone studying gender in a UK institution, allowed me to be critical as well. Here I wanted to emphasise that I do not say it is only in the Global North or western institutions, in this case UK, that people can gain critical knowledge. However, in my case, it is in the UK institution that I actually learnt about gender and postcolonial theory which allowed me to discuss gender issues and be critical regarding the legacy of colonialism. As said by Adriany et al., (2017), it was their engagement with theories in the Global North, including postcolonial and decolonial theory, that enabled them to understand the importance of acknowledging various voices of women. Thus, my authentic insider position created a hybrid space where I could speak for my own culture without being judgemental or generalising women’s experiences in the Global South or in a Muslim country as one single category that is victimised and has no autonomy to perform agency. At the same time, I am also critical in seeing the discursive practice of shari’a in Aceh today.

In addition, by employing an ethnographic approach for this research, I am aware of several challenges in regard to my own personal background that construct my point of view and also my identity, such as ethnicity and gender. Huggins and Glebbeek (2009) highlighted the importance of identity negotiation in conducting ethnographic research as a way to negotiate with the dynamic situation and setting in the field. In some cases, as mentioned by Huggins and Glebbeek (2009), a woman researcher is seen as a “woman [... rather than a fully] professional researcher”, which I believed would be another challenge that must be faced, particularly in a society

with a strong patriarchal culture. Demovic (2009) explained her experience of negotiating her identity as a modern American feminist conducting research in a Muslim society in Zanzibar. During her fieldwork, she adapted her appearance and dress, such as wearing head covering, in order to respect and engage with local culture.

A similar approach was also implemented by Sehgal (2009) during her field research on a women's organisation within the Hindu Nationalist Movement in North India. Although Sehgal was born as an Indian from a Punjabi Hindu family, her background as a scholar studying in a Western institution meant she was seen as an outsider, or someone with Western feminist thought who could possibly be a threat. During her fieldwork, Sehgal not only modified her dress by wearing a *sari*, she also decided to employ "partial secrecy" and "partial disclosure" of her identity, in which she exposed her Hindu and Indian background while also hiding her "ideological alignments" and "political standpoint" (Sehgal, 2009, p.336).

Like Demovic and Sehgal, I also adapted my public appearance following local regulations, which require Muslim women to cover their head and wear a loose fitting outfit. Most of the time, I went out wearing a scarf to cover my head, although there were a few times I did not wear any head cover, like one of my local contacts in Aceh. During my six months' stay there, she only wore head cover a few times for various different reasons, such as attending her friend's wedding and when she was ill, and she told me she needed to cover her mouth so people would not be infected. She had been caught twice by the WH for not wearing a headscarf, which she told me did not stop her, even though she admitted sometimes she feels uncomfortable when some people look at her head to toe due to her appearance. She also told me it was fine for me not to wear a headscarf if I just walked around the area where I was staying. So, I decided not to wear a veil when I went jogging around the residential area where I was staying, and, indeed, for most of the time I met women in the neighbourhood chatting with each other on the roadside not wearing any head cover. There were a few times when I went out with my local contact when we both did not wear, as I was also curious about people's response. Indeed, I did not feel comfortable as some people were actually staring at me because of my appearance, which was exactly the same as my local contact experiences sometimes.

During my stay in Aceh, I only twice wore a veil, which fully covered my head, this is known as a *jilbab* in Indonesia; once was when I saw a public caning

ceremony and the other was when I went to a local event organised by Hizbuth Tahrir Indonesia. I was told by my local contact to wear a full veil if I wanted to attend the public caning ceremony, she warned me that I might not be allowed to enter the area if I did not do so. Although, later on, I found that some women were not veiled; however, I did not know whether this was because they were non-Muslim or because they lived in the neighbourhood where the ceremony was being held. Meanwhile, regarding the Hizbuth Tahrir Indonesia event, I decided to wear the veil, as I generally knew the type of dress people wear to attend these events. Therefore, I adjusted my outfit to conform to the occasion, although still I did not look like a member of the organisation as they always wear long, loose-fitting dresses.

Wearing the veil is not something new for me, as an Indonesian woman who was born into a Muslim family. When I was in high school, I joined an Islamic study group which was part of a prominent hard-line group in Indonesia and at an international level. In this group, male and females were segregated, we called each other using Arabic terms, *akhi* for male, which means brother, and *ukhti* for women, which means sister. One or two *ukhti* always came on Friday after school to preach to us and, sometimes, we also arranged other discussions outside the school area. During that time, I was always being told that a Muslim woman's dress had to be long and loose fitting so it did not show the shape of my body; this became my dress code at that time.

When I was part of this group, I was indoctrinated that being in a relationship was *haram*, or forbidden, as was to be a nationalist, because the state had adopted democracy, which is a Western value; and that we had to revive the caliphate and uphold *shari'a*. During that time, I called my non-Muslim friends *kafir* or infidel. However, I decided to quit the group after joining some traditional Islamic lectures held in a mosque and a traditional Islamic school, known as a *pesantren*. After comparing one to the other, I started to confront the *ukhti* in the Islamic study group by asking more specific questions about praying, about which she could not give me an answer, and avoided it by saying those topics I asked had often been discussed by other Islamic teaching groups. After that, I was once sat next to her and heard her reciting the Quran, but not that fluently, which raised my scepticism about her knowledge of Islam. I then decided to leave and learn about Islam through traditional religious preaching and from books.

I was studying at one of the biggest Islamic universities in the country and, during my study, there was no obligation for me to practise Islam, although I had to undertake several compulsory modules on Islamic studies. Although I was never compelled to practise Islam, sometimes I was advised either to pray or to wear a ‘morally proper’ outfit. I wore a headscarf for several years, during high school and at university, of my own free will. I subsequently decided to remove my veil because I see it as an identity that is associated with Islam, and I do not want people to see or judge Islam based on what they see from me. However, I greatly respect people who wear the veil and I do not see it as a symbol of oppression.

In addition, I worked as a journalist for more than eight years. I was often sent to cover conflict and war zones around the world, including Libya, Egypt and Tunisia during the Arab Spring, Mindanao in the Philippines, conflict in Southern Thailand, Sri Lanka, the Basque country in Spain and North Korea. In some of those assignments, I wrote stories about women in that kind of situation and how they performed their agency. In southern Thailand, for example, I filmed a female human rights defender who was fighting for justice regarding the Tak Bai incident in Narathiwat province, in 2004, in which more than 80 Muslim civilians were killed. In Libya, fighting against my own prejudice at that time of Arab women as oppressed victims of a patriarchal culture, I covered women’s active involvement in the uprising (Pirmasari, 2016). I met a woman and her daughter who were involved in many public rallies demanding democracy and international intervention to help them in fighting against the authoritarian regime; her husband fully supported their activities. Those experiences helped me to see that women were not merely victims during insurgencies, but they also played many other important roles to change the situation, and this needs to be acknowledged, appreciated and recognised as varied, which will also help me to avoid what Mohanty (2003) described as the universalisation of women’s experiences in the Global South. These experiences have built my awareness about different types of Islamic groups and how religious texts are interpreted differently. It also constructed my belief that religion is a personal matter and no one should be forced to practise it.

2.3.1 Gender and the Colonial Legacy

As mentioned in chapter 1, this thesis is informed by postcolonial theory, which built my understanding of how studies from the Global North or the Global South could

indeed perpetuate Western hegemonic knowledge and the legacy of colonialism . For example, the term ‘gender’ is associated with Western values has been adopted into the Indonesian language because there is no Indonesian translation for it.

This section will explore how colonialism still affects certain aspects of current life, particularly gender equality and female empowerment within the different societies. Although some other colonial powers, such as the Portuguese, British and Japanese also ruled the country, at various times, Indonesia was colonised by the Dutch for more than three and a half centuries, before declaring its independence as a nation in 1945. According to Vickers (2005), Dutch power in each region was varied, some regions, like Java, were under Dutch colonialism longer than other provinces. According to Locher-Scholten (2000, p: 16), Java was the centre of political life in Indonesia during colonial times, and Indonesian feminism was born and developed there. Even though women in pre-colonial Southeast Asia were already known for having greater autonomy, important roles in business or the political sphere (Reid, 1988a). On the other hand, Aceh was one of the regions that resisted the most against foreign and colonial power. It took about thirty years for the Dutch to defeat Aceh, and the colonists also admitted that the conquering of Aceh was the most costly war in their history (Brown, 2003, Vickers, 2005).

As Java experienced the longest occupation of all Indonesia, the island was subjected to the greatest colonialist influence in many aspects, including infrastructure development and women’s education. According to Brown (2003), in 1901, the Dutch began promoting education for women in the Indies as part of the so-called *Ethical Policy* programme. He argued this programme aimed to increase people’s welfare, but also to make them closer to Dutch culture which was expected to make them loyal to the colonists. Before the colonial era, girls were educated informally by their parents and were prepared to participate in the workforce or married life (Brown, 2003). Thus, the colonialists brought modernisation to girls’ education in what was then, the Dutch East Indies. However, education and change were mainly only open to women from the elite group, particularly in Java, while ordinary people and the majorities did not get access to it and were left in their own cultural environment (Locher-Scholten, 2000). Indeed, according to Blackburn (2004), those who benefited most from the educational expansion were Europeans who lived in the East Indies.

In addition, the Dutch administration in the region also implemented a segregation policy, where people were separated based on their race and social class.

There were three distinct legal groups recognised within the legal system, civil service and education sector: European, Foreign Orientals, which included Chinese and Arabs, and the Native Indonesian group (Locher-Scholten, 2000, p:18). This created stronger sentiments for local people towards foreigners and their legacy and cemented the gap between native Indonesians and those from the elite group, aristocrats, and foreigners.

Native Indonesians who received education during that time mostly came from Javanese aristocratic families, like Kartini, an Indonesian national heroine. Kartini was a Javanese princess, who was born to a nobleman working for the Dutch colonial government. Coming from an aristocratic family gave Kartini the privilege of being able to study at a Dutch primary school, which exposed her to Western culture and values. She was befriended by J.H. Abendanon, the Minister of Education and Industry for the Dutch East Indies (now Indonesia), and his wife. Kartini sent them many letters in the Dutch language, which were later compiled by Abendanon into a book titled *Letters of a Javanese Princess*. In her letters, Kartini expressed her admiration of Dutch culture, Western education and women's struggle in the West (see Brown, 2003, Kartini, 1921). Her thoughts also focused on education for women, promoting monogamous marriage as opposed to polygamy, which was a common practice during her time, and also a re-evaluation of Javanese culture (Locher-Scholten, 2000), including the use of opium that was legitimised by the government at that time (Kartini, 1921). Kartini later became known as a symbol of women's emancipation in Indonesia and her birthday is celebrated as a national holiday to commemorate her struggle for girls' education and women's rights. However, this has raised some other implications. Arguably, it widened the gap between Java and the rest of Indonesia as 'Kartini Day' is the only one celebrated nationally. Many other women had fought against the colonialists or were involved in promoting women's education, but their birthdays are not celebrated as a national day. Aceh, for example, has Keumalahayati, who was the world's first female navy admiral (Wijaya, 2012), and led a female military division, the Inong Balee, as well as a male division, to fight against the Portuguese and the Dutch in the late 16th to early 17th century (Husin, 2016). Other national heroines from Aceh who also helped to fight against the Dutch are Cut Nyak Dhien and Cut Nyak Meuthia, while, from other islands, Martha Christina Tiahahu (Maluku, Ambon) and Maria Walanda Maramis (Minahasa, Sulawesi) were actively involved in supporting the advancement of women in

Indonesia.

Kartini Day is celebrated by encouraging women all over the country to wear *kebaya*, a traditional Javanese costume. Here, as mentioned previously, women's bodies again become a contested arena to impose one culture's value on another. I would argue that many provinces experienced 'structured cultural colonisation', in which the Indonesian government enforced Javanese values on other cultures in the country, especially during the New Order era under the Soeharto regime (1966-1998). Details about how Soeharto's policies affected gender construction will be discussed further in chapter 3. Thus, for provinces like Aceh, after Indonesia declared independence from the Dutch in 1945, the colonial era was not over. Hasan Tiro, the founder of the Free Aceh Movement, for example, referred to the Indonesian Government based in Jakarta (Java) as new colonials who took their resources and oppressed the people (Kell, 1995, di Tiro, 1984).

Thus, despite the fact that Kartini also criticised some colonialist values, she is still associated with them. This brought about stronger sentiment, not only regarding foreign powers and the Indonesian Government, but also Kartini's concept of women's emancipation.

Sentiment toward the colonial legacy was also influenced by the colonialist attitude towards local values, termed "anti-Indonesian" by Locher-Scholten (2000), as they refused to acknowledge the social setting and values where they were situated. During colonialism, European women in the Dutch East Indies, the name for Indonesia at that time, distinguished themselves from the natives, through their clothes, behaviour towards servants, and political views, particularly related to female suffrage (Locher-Scholten, 2000, p:31). The rise of the feminist movement in the Netherlands during that period influenced the thoughts of those who lived in the colony, and, subsequently, the notion of emancipation and women's rights was always associated with colonial values.

Kartini's struggle to promote women's rights and education can also be seen as a success story of the Dutch Ethical Policy goals, namely, promoting women's education but also bringing the locale closer to Dutch culture, which could lead to their loyalty and a perpetuation of colonial power. Thus, women's emancipation in Indonesia is often seen as a foreign value with some legacy of colonialism.

I emphasise this story to explain my concern about being a perpetrator of the legacy of colonialism, as this research might also promote Western values. As

someone who learned and studied in a Western institution, in the UK, reading sources and theories mainly written by Western scholars has influenced my knowledge construction in analysing every situation around me. It has raised my concern of being trapped in a situation where I might judge my own culture based on those understandings. This situation also built a barrier between me and the locale during the fieldwork, as my educational background meant I was associated with the West, not only in relation to the educational institution to which I belonged, but also as the field that I am currently studying is about gender and women's rights. However, as mentioned in chapter 1, in this research I adopted Narayan's (1997) authentic insider role where third world scholars "speak for their culture" and at the same time are also critical of it (Narayan, 1997, p:142). Additionally, as previously mentioned, I was informed by postcolonial theory and read many works about Western hegemony of knowledge, Orientalist and Western scholars' writings about people in the Global South and its culture which built my critical stance towards the legacy of colonialism. Thus, this research is expected to build a perspective of the insider, an Indonesian Muslim woman, that could challenge Western hegemony of knowledge and add diversity to the body of literature in the study of gender and Islam, in particular.

Only recently the word 'gender' has been added to the Indonesian dictionary and is described similarly to the word 'sex', the state of being male or female.⁶ In Aceh, this term became more familiar after the tsunami disaster, where many international NGOs promoted gender equality programmes (see chapter 3). During my fieldwork, when I mentioned 'gender' to people and asked their opinion about it, I got a diverse response. I would argue women in Aceh are not one single category and their experiences are different to one another. Some women told me that the concept of gender equality is not something new for them, as their parents always taught them those values at home. Others disagreed because, in their opinion, 'gender' is about equality, which means women could be free like men, for example, to go to a coffee shop. Others said women should be at home and responsible for any housework, while men should work outside house.

In one interview, a woman told me that in Islam, women should be at home and should not be working in public. When, I asked her about Khadija, the first wife of the Prophet Muhammad, who was also a successful businesswoman, she responded

⁶ See: <http://kateglo.com/?mod=dictionary&action=view&phrase=gender>

by telling me not to pick some verses for my own benefit. As a Muslim myself, and someone who had learnt about Islam since my childhood, either at home or in an Islamic School, I know that Khadija supported the Prophet Muhammad's missionary endeavour, but this did not discount the fact that she worked. She was also the one who proposed marriage to the Prophet Muhammad.

However, during my interviews with people, usually I wanted to hear more about their perspective. In addition, during my fieldwork, I always told people that, even though I was studying in a Western institution and the word 'gender' is usually always associated with Western values that are incompatible with our Eastern values, I had come to Aceh to hear their point of view and experiences. When I was there, one woman I met told me some people were sensitive or a bit reluctant to talk about gender because, in the past, especially after the *tsunami*, many foreign NGOs had come to Aceh and campaigned about gender equality. Some of the staff wore 'inappropriate' outfits or accessories, like a sleeveless dress and long earrings. I use the term 'inappropriate' here to also mean uncommon in our society. Traditionally, in many communities in Indonesia, people are expected to wear formal outfits in public gatherings or when working and meeting people.

I do not agree with any idea to control or regulate how we, especially women, should appear in public, but, at the same time, I believe we should respect the local culture. Therefore, as in Aceh for example, I still tried to respect local values by always wearing a long sleeved top, long jeans or trousers and, most of the time, a scarf to cover my head. People generally knew that I was not local, because most Acehnese women wear a veil. They appreciated how I tried to respect their values and I also kept telling them that I had come to Aceh to hear their perspective. On one occasion, I was invited to stay for few days at a local person's house. In the early days, I always wore long trousers at home, and the host told me I did not have to do so in the house, but, if I went out of the house, then I must cover myself.

Additionally, the fact that I am a Muslim and originally from Borneo, brought proximities between me and the local people and helped me to be more accepted. As mentioned before, there has been tension between Java and the rest of Indonesia, and Aceh is no exception. Once, I was talking to a local man who told me that, in Java, you can get access to many things, including scholarships, schools and other facilities easier. As someone who was born and grew up in Borneo, then later lived in Java for the last decade, I fully understand what he meant. It cannot be denied that regional

inequality in Indonesia is still high, thus, sometimes it creates resentment. Java is still the most developed island and has the most advanced infrastructure in Indonesia (Panggabean, 2016). All the similarities not only bring proximities between me and the people I met here, but also made me accepted and welcomed.

On the other hand, although I am studying in a Western institution and reading sources written by Western scholars, as mentioned in chapter 1, this research took Uma Narayan's aforementioned Third World Feminist approach. Therefore, I hope this research could provide an in-depth and thorough picture of gender construction in Aceh, Indonesia, without neglecting local values and women's agency. By acknowledging different forms of women's agency, I believe it will give a space for people, including those who have been voiceless, to be heard.

Chapter 3. Women in Historical Discourse and Contemporary Reality in Aceh

This chapter provides debates about women's position in Aceh society from the historical context to the present time. The discussion covers a narrative of women's leadership in public space and how it is affected by religious discourse. This chapter uses various sources from historical texts, previous research, and fieldwork data I gathered in 2016-2017. This historical chapter of women in Aceh is fundamental to understanding how the contemporary gender discourse there is affected by the complex history of this region.

A narrative of women's struggle, leadership and heroism has been part of Aceh history, in which women played fundamental roles. The current situation in Aceh is unseparated from the dynamics in the society within its historical context. In this chapter, I present how history and religion are intertwined and being used for political purposes. The discussion presented here will help to make sense of the role of religious discourse in the society, which is fundamental to understanding current gender ideology. The implementation of *shari'a* is core to the construction of current gender ideology in Aceh, and this is inseparable from Aceh's strong Islamic identity.

This chapter begins with a discussion about indigenous matrifocal practice in Aceh throughout history until today. I draw upon the concept of matrifocality, from Raymond Smith who studied kinship in Guiana, and Nancy Tanner, who studied matrifocality in Java, Minangkabau and Aceh, Indonesia. In this section, I highlight the historical dynamics that have influenced the practice of matrifocality in Aceh, from the past to the present day. The second section elaborates the female queens' era and roles of religious leaders in the Islamic kingdoms in Aceh. Here, I present a history of Islam in Aceh, the gate of Islam in Indonesia. In this section, I also consider the history of female queens in other Muslim societies, drawing upon the work of Fatima Mernissi. Her works present some similarities to the case of Aceh, in which religious discourse played fundamental roles in perpetuating or eliminating women's leadership in public. The third section discusses women's leadership during the colonial era and the discourse of the female hero in Aceh today. In this section, I draw upon the works of post-colonial scholars, such as Edward Said and post-colonialist feminists, such as Lila Abu-Lughod and Leila Ahmed. Their works are consistent with my standpoint as an Indonesian feminist, as I have discussed in chapter 1. In addition,

the works of the aforementioned women on Egypt, a predominantly Islamic society, helped me to compare the situation with Aceh. In this section I also highlight the connection between religious discourse and the politics of identity. The last section highlights the prolonged conflict in Aceh and the tsunami disaster, which affected many aspects of people's lives. These two major events led towards a stronger Islamic identity and sentiment against the West. Overall, all discussions provide a fundamental background of how the practice of indigenous culture has shifted over time.

3.1 Gender Narrative within Aceh's culture of indigenous matrifocality

Some scholars have highlighted the study of the matrifocal family. Raymond Smith (1956) for instance, studied kinship systems in Guiana. Smith used the term in explaining male marginal power in the husband-father role in domestic relations. Male marginality is reflected in men's frequent absence and spatial separation in the domestic space (Smith, 1973, p.139-140). According to Smith (2001, p.822) "matrifocality is a property of kinship systems where the complex of affective ties among mother and children assumes a structural prominence because of the diminution (but not disappearance) of male authority in domestic relations". He argued that, in matrifocality, the centre in the relationship is the woman's role as mother (Smith, 1973). The maternal grandmother also has significant authority in the upbringing of her daughter's children, but not her son's (Smith, 1956). However, matrifocality is not merely applied to families with matrilineal systems, as Tanner (1974, p.132) explained, it can be found in many different kinship types: bilateral, patrilineal, matrilineal and other kinship systems. Hence, the application of matrifocality varies in many societies in the world.

In Indonesia, Aceh is one out of only a few societies that has matrifocal traditions, even though it has a patrilineal system at the same time. In 1974, Nancy Tanner published a paper about matrifocality in three societies in Indonesia, namely Java, Minangkabau (Sumatra) and Aceh. She defined matrifocality as a:

(1) [k]inship system in which (a) the role of the mother is structurally, culturally, and affectively central and (b) this multi-dimensional centrality is legitimate and; (2) the societies in which these features coexist, where (a) the relationship between the sexes is relatively egalitarian and (b) both women and men are important actors in the economic and ritual spheres. (Tanner, 1974, p. 131)

In saying women have a structurally central role, Tanner emphasised the mother's power in term of economics and decision making in the family. The reference to women's roles being culturally central shows how the mother is valued in the society, while "affectively central" emphasises how affect in the kinship system is valued (Tanner, 1974, p.132). Similar to Smith, Tanner's concept of matrifocality stresses the centrality of mother roles in the household, and male marginal power in this space.

The aforementioned Dutch scholar who was also a colonial advisor in the East Indies, Christiaan Snouck Hurgronje, discussed women's position in the household in Aceh. In his work, *The Acehnese, an ethnography account on Aceh*, Hurgronje (1906a) highlighted women's strong position in the household. Instead of being referred to as a housewife, a married woman was referred to as *po rumoh* (the one who owns the house). Hurgronje explained that, in Aceh society, the inheritance of a house is assigned to female heirs. Similarly, Jacqueline Siapno also described the inheritance system in Aceh society, in which the daughters are prioritised to inherit the family house and land, then the rest of their parents' wealth will be divided for the sons (Siapno, 2013). Thus in Aceh, particularly in the district of Aceh Besar and Pidie, women owned economic resources, such as rice lands, in which sometimes their husbands worked (Jayawardena, 1977). This gave women a relatively independent position, as they did not only own the house where they lived but also the economic resources on which to live.

Both Hurgronje (1906) and Siegel (2000), who studied the society in the 1960s, mentioned that a woman would live in her natal village surrounded by her kinfolds from her mother's line and when she married, her husband would move to her village. Men would be mostly absent in the house as they worked outside or even in other towns, hence when they came home to their wives they felt like guests. They had marginal roles at home and in child rearing, as their responsibilities were mainly to bring money to the house. Similarly, in her research, Tanner (1974) explained how in Aceh, matrifocality and male marginality in the domestic space is affected by men's relative absence from home. She reported that many men had to go for *rantau* (migrate to other towns) to work and earn money for the family, while women stayed in the village and took care of their children. Children spent most of their time with their mother and mother's families, while the father and father's families were far

away (Tanner, 1974). As in the Guyanese societies, as mentioned earlier in this section, a mother was a central figure for her children, with whom they establish stronger relations. Children saw their mother as the one who fed them, helped them grow, and who was responsible and working hard in the family (Tanner, 1974). Meanwhile, the father's role was relatively unseen by his children, which made them less close to him compared to the mother-child relationship.

As a region with a strong Islamic identity, in which the religious tradition is often seen as very patrilineal, Jacqueline Siapno was interested to see the complex interplay of Aceh's indigenous matrifocal tradition with Islamic belief and practices. In her findings, Siapno (2013) argued that gender relations in Aceh societies are different for those who live in the city and those in the rural area, "in Aceh, the culture of patriarchy and sex-segregation and discrimination is most intense in the cities, the centres of supposed "modern living" (Siapno, 2013, p.108). She claimed the city is the frontline that first faced the Indonesian government's development ideas and other foreign values which were seen as an outside threat. Therefore, the dynamics of resistance, in terms of Islamic identity, are stronger in the urban areas than the rural ones.

During the New Order era (1966-1988) under President Soeharto, the Indonesian government promoted some 'development' programmes for women all over Indonesia. According to Suryakusuma (2011) the Soeharto Administration implemented what she called "*Ibuisme Negara*" (State *Ibuism*), an ideology where women were expected to follow their *kodrat* or destiny as mothers and wives, and men were expected to be the protector of the family. Suryakusuma investigated New Order gender ideology, in which she explored state roles on the social construction of womanhood in the country. Her findings highlighted how state gender ideology developed through women's organisations like Dharma Wanita, an association for wives of civil servants, and Pembinaan Kesejahteraan Keluarga (PKK) (Family Guidance Welfare). Both organisations emphasised women's *kodrat* as mothers and housewives. At the same time, there was no organisation for a man whose wife was a civil servant or any organisation to educate a man to be a good husband and father for his family. The formations of the two aforementioned groups highlighted gender role expectation of men as breadwinners working in the public space and women as wives and mothers in the domestic space. The two organisations also controlled women's

freedom by regulating them regarding their roles, position in the family and responsibilities.

Robinson (2009) described Dharma Wanita as an elite women's organisation for the wives of government officials. Dharma Wanita has five fundamental roles for women or Panca Dharma Wanita. These are, women as:

1. wife accompanying husband
2. manager of the household
3. nation builder
4. children's educator
5. Indonesian citizen

The five roles all point to government gender constructions of women's roles and responsibilities. A woman was expected to be a mother and support her husband's career path and follow him wherever he was assigned. Women were also required to be responsible in the domestic space by managing the household and taking care of the children. The structural organisation of Dharma Wanita mirrored the male hierarchy, the higher the husband's position in the government, the higher the wife's position in Dharma Wanita (Suryakusuma, 2011, Robinson, 2009). Therefore, women's personal capacity and qualifications were not necessary, as their position in the organisation would follow their husband's position in the government. According to Suryakusuma (2011) even though Dharma Wanita emphasised a woman's role as loyal wife to her husband and mother for their children, the organisation's activities often took women away from their family and home. This indicates women's loyalty to the state was expected beyond that to the family, and the organisation's activities were mostly to promote the state's development programme such as training in home-economic activities (Suryakusuma, 2011).

Unlike Dharma Wanita which was designed for civil servants' wives, PKK involved urban and rural village women. PKK disseminated the state's patriarchal ideology during the New Order regime, and with it, women's subordinate status in the family (Robinson, 2009). The PKK programme often engaged with traditionally female activities, such as cooking, sewing, handicrafts, and flower arrangement. As mentioned by Suryakusuma (2011), PKK was the main mediating institution between the state and rural women in five main sectors: social, cultural, ideological, political and economic.

Socially, it mediated the concept of domestication; culturally it mediated

priyayization and ibuism; politically, it mediated state power through a quasi-militaristic, hierarchical structure; economically, it mediated the notion of the housewife and the nuclear-family norm to buttress state-led capitalist development; ideologically, it mediated Pancasila through the propagation of state ibuism.

(Suryakusuma, 2011, p.105)

Priyayization is originally from the word *priyayi*, a social class which has existed since the Dutch colonial era to describe an elite group close to power in Javanese society. Suryakusuma uses the term in the context of PKK to highlight the organisational power hierarchy in which elite people have control over ordinary people, particularly those who live in the urban and rural village. Similar to Dharma Wanita, the structural organisation of PKK followed men's occupational position in the government, which means women's personal capabilities would not affect their position in the organisational structure. At the national level, PKK was led by the wife of the minister of home affairs. This elite system was sustained at the lower level of government – at provincial, municipality and village level – and led by the wife of the particular leader.

The state's gender ideology was propagated to the whole provinces in Indonesia, including Aceh where women were relatively independent and held a strong position in domestic life. The national government disseminated some 'development' programmes to domesticate women, and encourage them to be supportive wives for their husbands and good mothers for their children at home. These policies affected the practice of matrifocality in Aceh. Unlike in the past where a woman would stay at her home in her village when her husband worked in another town (see Siegel, 2000), according to Srimulyani (2010) now a woman would follow her husband, leave her natal village and live with her husband in another town. Suryakusuma (2011) calls this concept *ikut suami* culture which literally means 'follow the husband culture', propagated by the New Order regime through Dharma Wanita and PKK. The term *po rumoh* has now shifted in meaning from someone who owns the house to someone who stays at home or is a housewife (Srimulyani, 2010, p335-336).

3.2 Narrative of Women in Aceh History

3.2.1 Women and the Sultanate of Aceh

“Aceh women are great in terms of diplomacy and competing with other countries. In the Samudera Pasai Kingdom, there were two famous queens, and Pasai was the most influential kingdom in Southeast Asia in the 13th century”. These words were spoken by a speaker in the Aceh within Historical Trajectory seminar held in Banda Aceh, in January 2017. The historical narrative of the female queen and heroine are everywhere in Aceh. Every time I met people during my fieldwork, they were proud of their history, listing the queen rulers during the Samudera Pasai kingdom and national heroines during the war against the Portuguese or Dutch.

There is not much literature about pre-Islamic Aceh. In the Indonesian archipelago in general, before the beginning of the first century the inhabitants were adherents of indigenous belief. According to Brown (2003) the first to circa 15th century was the golden era of Indonesian history. During this period of time, three world religions Hinduism, Buddhism and Islam penetrated and brought with them civilisations that influenced the development of literature, language, culture and religious monuments. Many of the Hindu and Buddhist monuments lay on Java, such as the 9th century Hindu temple, the Prambanan, and Borobudur, the world’s largest Buddhist temple (*Guinness Book of World Records*, 2012). Both Hindu and Buddhist civilisations spread across the Indonesian islands and beyond. In the 7th to 13th century, a Buddhist kingdom of Sriwijaya rose on Sumatera and extended its power to the Straits of Malacca. Buddhist relics of the head of a statue of Lokeshvara (a bodhisattva) were found in an unrecorded place in Aceh in 1880 (McKinnon, 1998). According to McKinnon (1998) the style of Lokeshvara’s crown is similar to a tenth century statue found in the ancient city Polonnaruwa in Sri Lanka. Hinduism also influenced pre-Islamic Aceh. In the 13th century, the Hindu kingdom of Majapahit, which was based in Eastern Java, raised and extended its control beyond, and Majapahit influence reached the Lamuri kingdom in the Western most tip of Sumatera or present-day Aceh (McKinnon, 1998). Then, the kingdom, located in Aceh Besar, converted to Islam following its rise in Aceh. Indrapuri, a Hindu temple was transformed as a building for Islamic prayer and religious activities (see Zein, 1999).

Early information on Islamic civilisation in Aceh can be found in a travel journal of the Venetian explorer Marco Polo on his return voyage from China to

Venice. In 1292, he stopped by the kingdom of Felech (Perlak), in northeast Sumatera, and wrote that the majority of the inhabitants were idolaters, but there were substantial numbers of Muslim followers living in the seaport area (Polo, 1914, p.338). Hence, many scholars believe Perlak, was the first site of Islam in the archipelago (Andaya, 2008, p.113).

Another early history of Islam in Aceh can be found in Moroccan traveller Ibn Batuta's journal. In 1345 he visited a kingdom in Sumatera which was led by El Malik El Zahir (Batuta, 1829). Batuta wrote that the king was a pious Muslim from the school of jurisprudence or *madhab shafii* (Batuta, 1829, p.200). Batuta mentioned that the inhabitants of El Malik El Zahir's district were also Islamic followers. In the *Hikayat Raja-Raja Pasai (The Story of the Kings of Pasai)* it is mentioned that El Malik El Zahir is the son of Malik al-Saleh, the first Muslim ruler of Samudera Pasai, a kingdom situated on the north coast of Sumatera which is now part of the Aceh province (cited in Ruslan, 2020).

The *Hikayat Raja-Raja Pasai* also highlighted the story of the first sultan of Samudera Pasai, Malik al-Saleh, known as Merah Silu, before his conversion to Islam (Hill, 1960, p.118). Merah Silu's conversion was followed by the whole population in his district which then meant that the city of Samudera became known as Darul Islam (Abode of Islam) (Hill, 1960). As mentioned above, the Samudera Pasai was the most influential kingdom in Southeast Asia.

Islamic kingdoms in Aceh developed through time. In 1511 the Sultanate of Aceh Darussalam was declared, it was a continuation of all previous and smaller Islamic kingdoms in the region from Perlak, Samudera Pasai, Islam Benua, Islam Lingga and Islam Samainra, Jaya and Darussalam (Hasjmy, 1977). The Sultanate of Aceh Darussalam grew and became a major port in the Straits of Malacca. Aceh benefited from its economically and politically strategic location (Hadi, 2004). One out of two majors ports in the Straits of Malacca was in Aceh (the other one was Melaka port) which was used as a transit point for merchants from the Middle East and India before continuing to China (Andaya, 2008). According to Hadi (2004) Aceh's strategic location helped the region in building relationships with the Muslim world which connected it through the Red Sea and the Indian Ocean. Many merchants from Gujarat in India, Turkey, Yemen and Mecca in Saudi Arabia passed through this route, which then opened the gate for further dissemination of Islam in the region.

Aceh's relationship with Muslim countries developed from trading to education and military support as well. In the field of Islamic knowledge, many Islamic scholars from Yemen, Mecca and Gujarat, taught Islamic study and Arabic literature in Aceh (Hadi, 2004, Reid, 1969), and it became the centre of Islamic learning and dissemination of Islam in the archipelago. Islamic education was not the only value absorbed by the region from other Muslim kingdoms. In the sixteenth century, Arab dress was required for the kingdom officials and at the same time, as mentioned above, some Islamic scholars from Mecca were also invited to preach there (Andaya, 2008, p.119). Andaya also highlighted some traditions, activities and ceremonies in the kingdom that were influenced by values from Islamic empires in Central Asia and India. Arab influence in the kingdom can also be seen from Arabic characters on the coinage which was being used there in 1778 (Marsden, 1784). Many letters sent from Aceh to kingdoms all over the world were written in Arabic characters, including the ones sent to the Ottoman Empire, King James I and King Charles II of England (see Gallop, 2011, Göksoy, 2011). The legacy of Arabic characters remains in the region until today. *Qanun* no 11/2002 Article 12(2) requires all government and private institutions, public agencies and individuals to use the Malay Arabic script in addition to Latin writing.



Figure 3.1:
The Sultanate Safiatuddin Park in Banda Aceh. In addition to Latin text, the name of the park is also written in Malay Arabic script.

In the political and military context, according to Göksoy (2011), in 1567 Sultan Alau'd-Din Ri'ayat Shah al-Kahar of Aceh sent a letter to the Ottoman Empire asking the Islamic kingdom to consider Aceh as an Ottoman village and treat the Sultan and his people as servants to the Ottoman Empire. Sultan Selim II of the Ottoman Empire was very pleased with his fellow Islamic kingdom in the Far East and willing to give the support and help which was requested. He promised his new

ally to send envoys with 15 galleys and two galleons, soldiers from Egypt and Istanbul, and military equipment including cannons and rifles (Göksoy, 2011). However, a sudden insurgency in Yemen forced the delay of the envoys to Aceh and prioritised sending military to Yemen. The Ottoman Empire later on kept its word by sending military support to Aceh (Göksoy, 2011), helped build a military academy known as Mahad Baitul Makdis in the 16th century, and provided all the instructors to train Aceh's army (Salam, 1995).

Aceh's relationship with Muslim countries is also maintained to a degree, during conflict between GAM and Indonesian government in 1976 to 2005. As mentioned in chapter 1, after the Iranian revolution GAM tried to gain support from Iran and other Muslim countries (Aspinal, 2007; Schulze, 2006). Malik Mahmud, one of GAM's top leaders, claimed Iran has offered to train GAM guerrilla fighters with one condition that they involved in Islamic revolution (Nessen, 2006). The group turned down this offer as they emphasised their interest in Aceh's independence, not religion. Mahmud claimed in late 1980s they accepted Libya's offer to give military training for GAM fighters with only few strings attached. Thus from 1986 to 1990 the group sent more than 1000 men to the North African country (Nessen, 2006). The relationship with Libya was only ephemeral, as GAM prioritised to get Western support and avoid being seen as a religious movement (See chapter 1). Thus, it can be said that global Islamic movement in the 1970s did not have a huge impact on Aceh's rebel movement, despite its spirit of anti-colonialism.

GAM founder Hasan Tiro always stated its sentiment towards both European and Indonesian colonialism. As he mentioned in one of his speeches, "colonialism, either by white, Dutch, Europeans, or by brown, Javanese Asians is not acceptable to the people of Aceh Sumatra" (di Tiro, 1984; p.16). However, since many GAM leaders were forced into exile in 1979, the group believed internationalisation was the only way to achieve their goal of an Independent Aceh (Schulze, 2006). Thus, even though in his speech at the beginning of the formation of GAM Hasan Tiro stated his antipathy towards colonialism, he also realised he need support from former European empires and its allies in order to win against the Indonesian government. This highlighted the dynamism of GAM's political view, affected by various aspects that often forced it to negotiate or compromise in order to achieve its goal.

Meanwhile, Aceh relationships with Muslim countries are still growing until today. With Turkey for instance, after the tsunami of 2004, Turkey was one of the

countries that helped Aceh by sending volunteers, medical facilities, food and building houses for local people. Gampong (village) Atjeh-Istanbul was established in 2005 providing shelter for local people, a school and mosque. Another Turkish legacy that remains is the Turkish Graveyard in *Gampong Bitai*, Banda Aceh. In this village, there is tomb of an Islamic scholar from Turkey Muthalib Ghazi bin Mustafa Ghazi, later known as Tengku Syech Di Bitai.

It was Islamic identities that tied and still tie Aceh and Turkey since the 16th century until today. This highlights the power of religion in society. This was the same religious discourse that brought Aceh women into power in the 17th century and at the same time ended it after almost six decades. The first female ruler of Aceh was Sultanah Safiatuddin who was elevated to the throne in 1641 after the death of her husband Sultan Iskandar Thani. Safiatuddin was the daughter of Sultan Iskandar Muda, known as the greatest sultan in Aceh. Under his reign, Aceh grew as a centre of Islamic studies and had one of the biggest Malayu-Islamic scholars, Syams al-Din al-Samatrani (Andaya, 2008).

Islamic scholars have fundamental roles within Aceh politics. It was the Islamic scholar Nuruddin Ar-Raniry who gave way for Safiatuddin to be enthroned as the first female ruler in the Aceh kingdom amidst many debates about whether a woman could be a leader. Like Ar-Raniry, another Islamic scholar in Aceh in the 17th century, Syaikh Abdurrauf al-Singkili also known as Syiah Kuala accepted women as leaders and considered female rulers as a normal phenomenon (Hadi, 2004, p.85). Syiah Kuala, in his book *Mi'rat al-Tullab*, referred to Queen Safiatuddin as *khalifah*, deputy of God, to implement God's rule in Aceh Darussalam (Hadi, 2004, p.60).

Nuruddin Ar-Raniry and Syiah Kuala were the two most prominent religious leaders in Aceh, after which two of the biggest universities in the province are now named. As Kadli Malikul Adil (a most respected and outstanding Islamic scholar) at that time and second highest in the government was just below the sultan; Ar-Raniry and Syiah Kuala also had strong influence in the kingdom. Ar-Raniry served the office of Sultan Iskandar Thani and Queen Safiatuddin at the beginning of her reign. After him it was Syiah Kuala, who served as Syaikh al Islam (the highest Islamic scholar) during Queen Safiatuddin's reign and three more queens after her.

Syiah Kuala was one of the biggest *ulama* (religious scholars) of all time in Aceh. There is a famous local saying "*Adat Bak Po Teumeureuhom, Hukum Bak Syiah Kuala, Qanun Bak Putroe Phang, Reusam Bak Lakseumana*", which means that

culture or local customs are decided by the king; the law is based on the religious leader Syiah Kuala; *qanun* (local regulations) are in the hands of Putroe Phang,⁷ Princess Kamaliah of Pahang, the wife of Sultan Iskandar Muda; and *reusam* (the military) is under the admiral's responsibilities. It is interesting that regarding law and *qanun* the saying does not mention the positions of who is in charge of both aspects but rather mentions the names of Syiah Kuala and Putroe Phang. I would argue this emphasises the significant position and achievement of the two persons. According to Hasjmy (1977), during Iskandar Muda's administration (1607-1636), Putroe Pang established the House of Representatives which was responsible for making legislation. During this period, the representatives were male and female. However, it was during his daughter Queen Safiatuddin's era that the number of women in this legislative body increased. According to Hasjmy (1977) there were 22 females out of 73 members, led by *Kadli Malikul Adil*.

Queen Safiatuddin took the throne when her husband, Sultan Iskandar Thani passed away. The couple did not have any male heirs, hence, according to Hasjmy (1977) Ar-Raniry, who was the *Syaikh al Islam* (the highest Islamic scholar) during the reign of Iskandar Thani, held a meeting with top officials and *ulama* to decide who would take the throne. The *ulama* agreed a woman could be a leader as long as she had religious knowledge, attitude and knowledge of science, the same requirement that applied to a male leader. Hence, Queen Safiatuddin became the first female ruler of Aceh Sultanate and took the title *Taj al-Alam Safiatuddin Syahi* or *Safiyat al-Din Syah*. *Taj al-Alam* means Crown of the World and *al-Din* refers to Allah's laws (Khan, 2017). In using this title, Khan argues the queen wanted to emphasise her position as the ruler of the sovereign kingdom and that she had been chosen to rule based on Allah's law (2017, p.177).

Queen Safiatuddin was known for her respect towards religious scholars, even those who were against her leadership as a women ruler. According to Ar-Raniry, during her reign, the capital was an affluent kingdom, food prices were cheap and people lived in peace (Cited in Hasjmy, 1977, Reid, 1988b). He praised the queen called her a just leader with a lot of respect toward *ulama*. During her time, Islamic schools grew and she supported religious scholars to write books.

⁷ She was called Putroe Phang (princess of Pahang) by the people

According to Hasjmy (1977) Queen Safiatuddin was the one who opened up access for all women to study and work in any government office, including the military. It seems that the matrifocal culture developed during her time as she proposed laws regarding women and children to the House of Representatives. Hasjmy (1977, p.127-128) lists some of these laws as follows:

1. Everyone has to provide a house for their daughters, which will be given when she gets married.
2. In addition to a house the daughters should be given land and gold as well.
3. A husband should give land and gold to his wife which will be hers.
4. A husband has to stay with his wife at her house.
5. As long as they are together, all assets are considered as joint property.
6. All assets gathered since marriage are considered as shared ownership, 50% each.
7. In case of divorce, all properties go to the wife while assets gathered during their married life will be shared equally between them.
8. During *iddah* (the waiting period after divorce in which women are not allowed to re-marry), an ex-husband is still responsible for the livelihood of his ex-wife.

Many of the queen's policies indicate her concern for women's rights and equality. She also focused on developing Islamic knowledge and it was in her era and the three queens after her, the biggest *ulama* of Aceh, Syiah Kuala, was in charge as Kadli Malikul Adil. His name as a distinguished Islamic scholar is still alive today as in the aforementioned local saying; and Syiah Kuala University, in Banda Aceh is named after him.

Queen Safiatuddin ruled Aceh for 34 years. During her era, she also prepared the three female rulers after her to take the throne when she was gone (Hasjmy, 1977). She died in 1675 and soon after that Queen Nurul Alam Naqiatuddin was installed as the new ruler. During her reign, the movement to overthrow women rulers grew. Protestors did not only campaign against women as leaders but also burnt down the grand mosque of Baiturrahman (Hasjmy, 1977). Queen Naqiatuddin died in 1678 and was replaced by Queen Zakiatuddin Inayat Syah who died in 1688. According to Hasjmy (1977) during the four female rulers' era, knowledge, culture and arts grew

rapidly. Under female rulers, Aceh also promoted religious tolerance. However, this ended with the end of the female leadership era in the Aceh sultanate (Khan, 2017). Kamalat Syah became the last queen in Aceh Darussalam, her leadership only lasting until 1699. She was deposed after a *fatwa* (a religious scholar's opinion) from Mecca was issued saying that women could not be leaders.

Therefore, it was a religious leader who paved the way for women to be rulers in Aceh Darussalam, but it was also a religious leader who took women off the throne. Nuruddin Ar-Raniry was a religious scholar who had lived in Aceh for so many years when he and other *ulama* decided that Queen Safiatuddin could be crowned as Sultanah. The Sultanahs' era in Aceh lasted for almost six decades from 1641-1699 and it was inseparable from the two biggest religious scholars' support (Nuruddin Ar-Raniry and Syiah Kuala) support. Syiah Kuala died 1693, which left the last ruling queen of Aceh Darussalam, Kamalat Syah without any support from a strong local religious figure. P.J. Veth argued her abdication was influenced by a group of Arabs in Aceh who were against female leadership (Cited in Khan, 2017). She was succeeded by a sultan of Arab descent, Sultan Badr al-Alam Syariff Hasym Jamal Al-Din. From then, until the end of the sultanate era in 1903, the throne was held by several short-lived sultans. The last one, Muhammad Daud Syah surrendered to the Dutch in 1903, which marked the beginning of colonial rule in Aceh.

Female queens in Islamic society did not only reign in Aceh. Mernissi (2006) investigated the existence of female rulers in Islamic society elsewhere. She criticised how the story of female queens in Arab society, in particular, is often forgotten not only by ordinary people but also by academia. Mernissi wrote that other scholars who studied history questioned her when she mentioned the existence of female rulers in Arab society in the past. This ignorance could perpetuate the stereotype of Arab Islamic patriarchal culture, which gives no space for women to compete in the public domain, especially on the political stage. Mernissi (2006) highlights the story of Asma Bint Shihab al-Sulayhiyya and Arwa Bint Ahmad Sulayhiyya from the Shi'ite dynasty of Yemen. Asma ruled Yemen together with her husband Ali Ibn Muhammad al-Sulayhi in the 11th century. When Ali officially took power in Yemen, he introduced Asma as an equal and partner to help him govern the country until his death in 1066. In 1091, Arwa Bint Ahmad Sulayhiyya, who was the daughter-in-law of Asma, became the second queen to rule the Shi'ite dynasty in Yemen. Like her parent-in-law, Asma governed the country together as a couple with her husband al-Mukarram

(Asma's son). Unlike Asma, Arwa still ruled the country after the death of her husband but faced several challenges by the ruling *caliph*. Despite some attempts to take her throne, Arwa remained in power as head of state until her death in 1138, dying of natural causes after she had ruled the country for almost fifty years (1091-1138).

According to Mernissi, within Islamic society a sultan/sultanah needs the *caliph's* approval to rule.

The origin of the word *caliph* is very different (from Imam who leads prayer at mosque), it derives from *khalafa*, which means to come afterward, to succeed someone in time. The first to bear the title of *caliph* was Abu Bakr, he was called *caliph* because he replaced the Prophet after his death. [...] The *caliph's* duty is to use religion to harmonise the political administration of the universe, politics and religion being inextricably linked. (Mernissi, 2006, p.32)

Mernissi also describes how the *caliph* is often addressed as the representative of God on earth. The *caliph's* duty is associated with the definition of Islamic law (Crone and Hinds, 2003). This emphasises the *caliph's* power in religious discourse which could affect the political stage. As discussed by Mernissi (2006) the *caliph* often opposed the idea to enthrone women as rulers, and without his approval, a female ruler would be unlikely to last long regardless of her capacity and ability as a leader. Mernissi mentioned that Sultanah Shajarat al-Durr in Egypt who decided to take her husband's position as the ruler after his death in 1250 encountered rejection from the *caliph*, despite her capacity and victory in a military campaign against the crusaders. She tried to rule without the *caliph's* approval, however she lost support from many different parties soon after they learned of his disagreement towards her leadership. This confirmed the power of religious leaders in eliminating women from political power.

Similar to this, the sultanahs' era in Aceh also highlights a contestation in religious discourse within the political stage. It was two locally based religious scholars who were behind the success of four women occupying the throne of the sultanate of Aceh in the second half of the 17th century. According to Abdurrahman Wahid, a Muslim religious leader and Indonesian President from 1999-2001, many local *ulama* in the past wrote religious books with consideration of local culture. Wahid (2006) called it "limited renewal" towards religious law (*fiqh*). He gave an example of an *ulama* from Banjarmasin, who wrote a religious book called *Sabilal Muhtadin*. According to Wahid, Arsyad al-Banjari wrote about "limited renewal"

towards inheritance law. Generally, in Islam the share of a male heir is twice that of a female, however Arsyad al-Banjari considered local Banjarese culture in South and Central Borneo, in which a husband and wife both work together for their livelihood. If one of them dies, the inheritance must be divided into two, the first half would be given to the spouse who is still alive, and the other half would be shared based on Islamic law (Wahid, 2006, p.250-251). Here, Wahid emphasised how religious interpretation could vary and relate to the local context.

The death of Syiah Kuala in the 17th century meant Aceh lost a strong local *ulama* and role model in religious and Islamic law. Along with Nuruddin Ar-Raniry and Syiah Kuala, Arsyad al-Banjari is categorised as a reformist *ulama* in Indonesia (Azra, 2004). Efforts to ban women from the throne would have never succeeded when Nuruddin Ar-Raniry and Syiah Kuala were still alive. When both great scholars had gone, some opposition groups managed to overthrow the queen from the throne, using religious discourse in the form of the aforementioned *fatwa* from Mecca. There has to be a legitimation to ban women from the throne, in this case a *fatwa* from Mecca, the birthplace of Islam, as it did not only come from a religious scholar but also from someone in charge of Islamic law in the holy place of Islam.

The use of religious discourse to exclude women from public leadership did not only happen during the sultanahs' era in the 17th century, it remains until today. In 2010, the local council of Bireun (a district in Aceh) urged the regent to fire Anisah, a woman sub-district head of Plimbang. The local council argued that *shari'a* forbids women from being leaders (*Tribun News*, 07. 10.2010). Anisah also received many threats, including texts saying they would do *jihad* and burn her office (Women's Voices Now, 2011). In a documentary made by Women's Voice Now, an NGO focusing on mobilising women via film media, showed a local *ulama* quoting a Quran verse *An-Nisa*: 34: "Men are in charge of women by [the right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth".

In Indonesia, this text is often interpreted as discussing public leadership and used to rule out women from political competition. The claim is that the sacred text has legitimised that men were destined to be leaders of women, because they excel over them not only in the domestic but also the public sphere. Hence, it was no surprise, for example, during a public seminar 'Engaging Men on Women's Empowerment' which was held at the State Islamic University Ar-Raniry, in January 2017, a female member of the audience raised this question with a speaker who was a

religious scholar and asked why this religious text was used by many people to attack women's competition in public leadership. Faqihuddin Abdul Kodir, the speaker in the seminar, agreed that many used the verses to prohibit women from becoming leaders, but he argued women could be leaders in Islam. According to Kodir (2001) there are different translations of the Arabic text amongst scholars, some define *qawwam* as leader, others define it as protector. According to Kodir, it is important to study the whole text and compare it to another text; and in interpreting the religious text he urged people to learn about the historical context of the text. In addition, according to Hassan (1991b, p.55) the Quran text literally means "some in relation to some", therefore the passage could be interpreted as some men are superior to some other women/men, so some women are superior to some other women/men.

In Anisah's case, for example, as reported in the documentary, the *ulama* claimed God says that men are superior to women because of a certain ability, hence women cannot be leaders. However, this argument was denied by the regent as he argued the verses do not talk about public leadership, therefore he believed his appointment of Anisah as sub-district head was appropriate. Anisah's appointment was also supported by Aceh's governor at that time, Irwandi Yusuf, and head of the provincial *ulama* council, Majelis Permusyawaratan Ulama Provinsi Nanggroe Aceh Darussalam, Prof. Muslim Ibrahim, who said there was no prohibitions for a woman to be a leader as long as she had the qualifications required (Komnas Perempuan, 2011). Ibrahim's comments were similar to Nuruddin Ar-Raniry's decision when he and other *ulama* in the 17th century agreed to let a woman rule the sultanate as long as she could fulfil the qualification in religious knowledge, attitude and knowledge of science. These were the same qualifications which also applied to men to be enthroned as Sultan.

However religious contestation of women's leadership in the public sphere is still one of the major barriers for women.

Banda Aceh, 1st February 2017 (field notes)

Tonight, my flatmate showed me a picture of a newspaper where a religious leader said, "the decline of Islam in Aceh began from women's leadership". I had mixed feelings reading this. I cannot verify if the source is legitimate or not, I checked the social media that posted this news, and it is associated with one of the city's mayoral candidates for the local election this year. It reminds me of one discussion I had with a local friend here. She told me about an experience of one of her friends who is running for a political campaign. Then in her constituent area, a tape recorder

always played every afternoon from the praying room/mosque saying that it is forbidden to choose a woman as leader according to Islam.

When I conducted my fieldwork between August 2016 and February 2017, Illiza Sa'aduddin Djamal was the mayor. Previously, she had been deputy mayor from 2012 until 2014, when she became the mayor, following the death of the previous one, Mawardy Nurdin. In 2017, Illiza joined the new election campaign, and ran with a male politician Farid Nyak Umar as her deputy candidate. Illiza's candidacy in the local election brought back the debates about women's leadership in the public sphere. In one interview with a local woman, I was also told that it is forbidden for women to be a leader.

“I disagree with women's leadership. If we talk about shari'a, it means women cannot be a leader, because we talk about shari'a. How can we implement shari'a if the leader is a woman? Where is the shari'a part of this, because in shari'a it is forbidden [for women to be a leader]” (Pipit, a local woman in Banda Aceh)

During that interview, a man also interrupted me when I asked Pipit what was her opinion about some *ulama* like Abdurrahman Wahid (known as Gus Dur, see below) who said woman could be leaders. The man said, women cannot be leaders and Gus Dur was not an *ulama*. I responded by saying he was an *ulama* of the biggest Islamic organisation in Indonesia, Nahdlatul Ulama, which literally mean the Revival of *Ulama*. “He is not an *ulama*” he insisted without further explanation. As I tried to avoid conflict during my interview, I changed the conversation as I started to feel tense and uneasy with the situation. I asked him to let me finish the interview.

In Indonesia, Gus Dur is known as a reformist and moderate Muslim scholar. His father, Wahid Hasyim is a well-known *ulama*, and his grandfather Hasyim Ashari is the founder of the aforementioned organisation, Nahdlatul Ulama. He studied in a traditional Islamic school or *pesantren* before continuing his Islamic studies in Al-Azhar University, Egypt and the University of Baghdad, Iraq. In 1984, he was chosen as the chairman of the Nahdlatul Ulama.

I found the debate about women's leadership in the public sphere could be very intense, especially when facing people with a different perspective. Many religious scholars still argue that women should be prohibited from being leaders. This religious discourse is used by many politicians to eliminate women from the political contest. During local elections in 2017, for example, *ulama* voices became central in the media debate about women's leadership in the public sphere. The news

publication, *Waspada* (6.02.2017), for example, published some *ulama* comments about prohibiting women as leaders and claimed that all *ulama* agreed it is *haram*. Abu Tumin, a charismatic local *ulama*, even had to make clarifications after being misquoted by some media for banning women in leadership. He said he had never been interviewed about women in leadership, so he was surprised when online media quoted him as saying women could not be leaders, according to Islam (*Kanal Aceh*, 2017). He then explained that there is no absolute text in the Quran and hadith that forbid women from being leaders. He emphasised that the *An-Nisa* verse 34 which is often quoted to justify this, is more about the domestic relationship.

The case of women's leadership in the public sphere demonstrates different translations and interpretations amongst religious scholars, and is used by politicians to support their interest. In this situation, the religious discourse is brought into the political arena. In a society with a strong religious identity like Aceh, as has been discussed in the previous section, religious discourse is an option to lure constituents during elections. Its use could also polarise people, which could lead to some dissenters' exclusion. This has happened to ordinary people and even the *ulama*, as reported in my interview above. Sometimes, it comes with labelling people with a different view as liberal, secular or deviant. The discussion about how differences matter and how homogenising society could lead to exclusion will be further discussed in chapter 4.

This section highlighted a glorious period of Aceh's past history where women were able to lead the sultanate of Aceh Darussalam for 59 years. This was made possible with the support of two of the most prominent Aceh *ulama*, Nuruddin Ar-Raniry and Syiah Kuala. The sultanah era in Aceh ended in 1699, after the two *ulama* had gone, and the last queen was deposed by a *fatwa* from Mecca that prohibited female leadership. The debates about female leadership in the public sphere are still major barriers for women in Aceh and possibly in other regions in Indonesia, a Muslim majority country. The religious views on women and leadership are open to interpretation and there is no single definitive interpretation of religious text. In the political arena, religious discourse is used to gain people's support or to dismiss a political competitor.

3.2.2 Women and the Colonial Era

In Indonesia, Aceh is known as the province that resisted the most against Dutch invasion. It took 270 years for the Dutch to conquer Aceh, and more than 15000 of their forces were killed before they succeeded in occupying this region in 1873 (Brown, 2003). However, Aceh's strong resistance against the Dutch never stopped, and the war continued until 1945 when Indonesia declared independence from Dutch colonialism. Aceh prided itself with its resistance and the fact that it was not only males who led the war but also females. Pictures of national heroes and heroines are everywhere in Aceh and some roads in the province and other regions in Indonesia are also named after them.

People mention with pride the historical narrative of Aceh women's bravery and their leadership. However, female achievement in Aceh history is now merely just a narrative that many younger people might not even know about. One woman commented about this in a recent seminar in Banda Aceh in January 2017:

Aceh's women are great, but when people asked me what is the greatness of Cut Nyak Dhien, what is the greatness of Cut Meutia, what is the greatness of Queen Safiatuddin? I cannot answer that, and I believe almost all the youth, especially in Banda Aceh, cannot answer this question. What is Queen Safiatuddin's achievement beside [being] enthroned as a queen? What did Cut Meutia do in addition to fighting with her *rencong* (Aceh sword) and killing people (the enemy)? They do not know. (Aceh dalam *Lintasan Sejarah* (Aceh within Historical Trajectory))

In addition to female queens, as mentioned earlier in this chapter, Aceh is also known for its female heroes, some of whom were mentioned above. Laksamana Keumalahayati was another hero and the first female admiral in the Sultanate Aceh, Darussalam. She lived in the late 15th century and fought against the Portuguese and the Dutch during the sultanate era. She was trained at the Mahad Baitul Makdis, the military academy in Aceh that was built with the support of the Ottoman Empire (Salam, 1995). Her husband was a navy admiral when she was serving as the protocol commander of the Istana Darud Dunia palace at the Sultanate Aceh Darussalam. Her husband died during a battle at sea against the Portuguese. Keumalahayati then formed a military command consisting of widows of those who had died fighting against the Portuguese to fight against the Portuguese and the Dutch. This command was known as *Inong Balee*; as can be seen, the same name was used much later by

GAM for its women's military wing. Keumalahayati was bestowed as a national heroine on National Hero Day, by President Joko Widodo in 2017.

Another Aceh heroine who fought against foreign invasions was Cut Nyak Dhien. She is known as a guerrilla fighter who encouraged and led her people against the Dutch, who she referred to as *kafee*, the Acehnese word for *kafir* or the infidels (Ibrahim, 1996). The Dutch captured her in 1905, after one of her trusted persons reported her position to the colonials. When captured, she was ill and suffered from near-sightedness, which affected her guerrilla ability. The Dutch exiled her to Sumedang, West Java as they worried she would manage to mobilise Acehnese to fight against their power again (Ibrahim, 1996). Cut Nyak Dhien is not only known for her bravery as a guerrilla fighter but also as a religious person as well. In exile, she taught religion until her death in 1908.

In Aceh, I visited the house of Cut Nyak Dhien, which is now a museum, with some local friends.

Aceh Besar, 15 January 2017 (field notes)

In the museum, I saw a picture of a woman in a veil. The woman (the guide of the museum) told us the woman in that picture was Cut Nyak Dhien. I asked her, 'What about the other picture?', the one who was not veiled. She said that one was only a painting made by the Dutch. "They just speculate about her face as they never saw her. She always went out wearing a face veil" she said.



Figure 3.2: A picture taken from the museum of Cut Nyak Dhien, in Aceh.

I was informed that the original documents of all the pictures were in Leiden. According to the KITLV⁸ Digital Image Library, at the University of Leiden, Netherlands, the woman in the picture (figure 3.2) is *Vrouw van Teukoe Panglima Polim te Sigli* (wife of Teuku Panglima Polim from Sigli) dated 1903. KITLV also has another picture of Panglima Polim's wife, in which she was not wearing a veil; and only one of Cut Nyak Dhien, dated 1905, when she was captured and suffered from near-sightedness. However, this picture was not on display at the museum in Aceh.



Figure 3.3: Picture of Cut Nyak Dhien, 1905 (KITLV Digital Image library).

Many people have debated Female heroes' public appearance instead of their heroic acts during the war.

Field notes Banda Aceh, 17 December 2016

I showed a local friend photos of a banner I took in Lhokseumawe including one with a picture of Aceh's National Heroine Cut Nyak Meutia, without a veil, unlike women in Aceh now. Then her son said, when he and his schoolmates were at the museum of Cut Nyak Dhien (another national heroine), they were told Cut Nyak Dhien's picture was not 'correct' (not her) because she did actually wear a veil. He said, 'Someone from the museum told them, that it was only the Dutch way to 'merendahkan' degrade her (because she is not wearing veil).

The discussion about Cut Nyak Dhien's veil also received lots of responses on social media, as reported in the print media. The claims were that as a Muslim woman from a province known as the veranda of Mecca, she must have worn a veil, unlike in the official painting of the heroine (*Republika*, 24.12.2014; *Tribun News*, 23.12.2014). One account quoted by *Tribun News* posted an official painting of Cut Nyak Dhien together with the same photo, with the following statement: "photo of a Muslim

⁸ The Koninklijk Instituut voor Taal-, Land- en Volkenkunde / Royal Netherlands Institute of Southeast Asian and Caribbean Studies

woman who protects her honour by covering her *aurat* [part of the body that needs to be covered], they can turn it into a picture of a woman who exposes her *aurat*, even when she is a national heroine” (*Tribun News*, 23.12.2014).

The post suggested if women do not cover their *aurat*, then they do not protect their own honour. This narrative will, to some extent, alienate those who do not do so. Many Islamic scholars have different interpretations about covering the *aurat*. However, in practice the definition depends on who has the power in the interpretation of *shari'a* law.

As can be seen from the field notes above, the discourse about the veil has also been applied to Cut Nyak Meutia, another national heroine from Aceh, who is also known for her guerrilla ability. She would hide in the forest with her followers and often got logistical support from people in the villages (Zainuddin, n.d). She had a reputation as a democratic leader who was open to criticism from her followers. She would tell them if she made a mistake, then they should remind her (Yakub, 1979). Cut Meutia died in 1910 after being ambushed in the forest by the Dutch military under the command of W.J. Mosselman (Yakub, 1979).

In 2017, in order to honour her struggle, the Indonesian government released new currency with her unveiled picture on it. According to the Indonesian Central Bank, the picture had been approved by the heroine’s family/heirs and traditional leaders (*Detik Finance*, 21.12.2016). The grandson did not want any debate about his grandmother’s picture; she was never captured by the Dutch, hence there is no real photo of her (*Liputan 6*, 23.12.2016). He also emphasised that the veils women wore in the past were more like a scarf. This case is now going to court as a local male councillor, Asrizal H. Asnawi from Aceh sued the Central Bank, regarding the female heroine’s veil. During the aforementioned seminar in January 2017, he said:

“As Muthia talked about Cut Meutia and Mr. Azhari also mentioned it, I happen to be the one who will pursue this case, Insha’Allah (God willing) next Monday or Wednesday we bring it to Central Jakarta. I am not a history expert Mr. Azhari, I do not know history, but I know that an Acehnese has to cover her head”. (Asrizal H. Asnawi, Aceh Local Council)

Even though he admitted he was not a historian, he insisted in arguing that in the past, Acehnese women wore a head cover. In the court case, the plaintiff also urged the Central Bank to replace the picture of the female hero with one wearing a head cover (20.09.2017b).

Instead of focusing on the discussion about Cut Nyak Meutia's heroic struggle during the war against Dutch colonialism, people have been debating about her public appearance, a debate that in fact would never have happened to a male hero. In addition, Cut Nyak Meutia's heroic struggle was not the main topic of her photo displayed in Blang Padang, Banda Aceh. Unlike male heroes' descriptions displayed there, her profile emphasised her personal life.

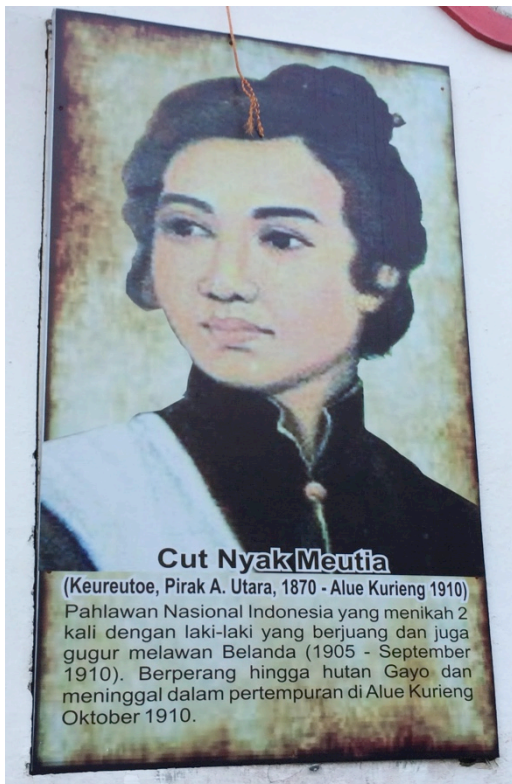


Figure 3.4:

“Cut Nyak Meutia (Keureutoe, Pirak A. Utara, 1870- Alue Kurieng 1910).

Indonesian national heroine, married twice with men that also fought against the Dutch (1905-September 1910). Fighting up to Gayo Forest, she died in a battle in Alue Kurieng, October 1910”.

The two cases highlight that public discussions about the two heroines have been dominated by their public appearance or personal life, instead of their struggle or war strategy. The dominant narrative tries to homogenise the current discourse of women's public appearance with past history. In many history books, women's appearances vary, some wore a scarf while others did not. Current *shari'a* regulations applied in Aceh require women to wear Islamic dress, which includes a veil. Even though many Islamic scholars have different opinions about it, the local government has its own specific definition of what kind of dress women should wear (see chapter 4). Hence, the veil has become part of Aceh women's identity, particularly since 2002 when the local *qanun* was first passed.

The reconstruction of history here, particularly regarding women's public appearance can be seen as an effort to control women's bodies, which is in contrast

with Aceh's indigenous culture in the past, where women were relatively independent. This discourse has also meant that Aceh women's bravery and leadership in public is being forgotten, as in the present day, any discussion is about their public appearance instead of their heroic acts.

In this next part, I discuss the work of Edward Said and some other scholars. I argue that if we focus on the issue of the veil, from a Western feminist viewpoint, this only creates more sentiment among the conservatives and at the same time neglects women's agency (see chapter 6). I would say this could perpetuate what Edward Said referred to as Orientalism. In this case, the reconstruction of history could perpetuate judgements in which non-European countries and Islamic culture are seen as patriarchal and male dominated. Said (2003) criticised Western domination of the construction of knowledge of non-European countries and Islamic societies - the 'Orient' and argued that Orientalism was "a Western [Occidental] style for dominating, restructuring, and having authority over the Orient" (p.3). He claimed that many scholars' writing, especially during colonial times, could not be separated from their identity as colonials. Many of those scholars worked with the colonial governments, which might have a particular interest. In the case of Aceh, the aforementioned Snouck Hurgronje, a Dutch anthropologist researched the society but at the same time also worked for the Dutch administration. According to Said, these people's positions as scholars writing academic work would make their work be seen as scientific with a claim to truth or knowledge, yet, there was a hierarchical relationship between the colonials and the colony. Many of these works viewed the colony as one single category or generalised about the society but were recognised as knowledge about the society and often used by scholars from non-European countries as well. The colonies and Islam were viewed as inferior, underdeveloped, less civilised, male dominated and patriarchal (see Said, 1989, Said, 2003).

The same criticism is also coming from some Middle Eastern feminist scholars, such as Lila Abu Lughod (1998) and Leila Ahmed (Abu-Lughod, 1998, Ahmed, 1992, Ahmed, 2011). The two scholars criticised Western hegemonic knowledge perpetuated by Middle Eastern scholars, such as Qasim Amin who wrote *The Liberation of Woman*. Amin is an Egyptian, educated in Paris, France. Their criticism of Amin is regarding his standpoint mirroring 'the Orientalist' works which see European civilisation and culture as superior that the colony, in this case Egypt, needs to follow. Amin did not only praise European society and undermine Egyptian

Muslim society that he saw as backward, he also suggested that women there should cast off their veil in order to be advanced like European women (Abu-Lughod, 1998, Ahmed, 1992, Ahmed, 2011). Ahmed (1992) admitted that women are often oppressed in Islamic societies, but her concern is the political use of this phenomenon by the West. I would argue, many feminist agendas like Amin's only create more sentiment among conservatives in his local culture. This is often counterproductive, as feminism would be seen as only Western and in need of adoption by other societies. It will be followed by more conservative responses in order to protect women from the Western influence of feminism, which could lead to further control over them. If it happens, it will only confirm 'the Orientalist' stereotype about Muslim communities where women are oppressed. Therefore, Ahmed and Abu-Lughod are against the idea of importing a Western/European feminist agenda which often focuses on the veil as a symbol of oppression. They suggest that Muslim women need to create their own feminist ideas and write their own history of feminism without neglecting the local culture.

The case of forgotten Arab queens, as mentioned previously in this chapter, also highlighted how feminist history has been ignored and disregarded by local societies and scholars. This ignorance could perpetuate the assumptions of Islam and Arab culture as patriarchal. With regard to Aceh, the history of female queens and heroes is only made into a narrative in which women's public appearance is discussed instead of their work and achievement.

In the case of Aceh, the existence of female rulers during the Sultanate era and brave heroines during the war against Dutch colonialism did not fit the stereotype of women's oppression in Muslim society. However, I would argue the present narrative of female queens, which some have claimed as evidence of the decline of the Sultanate era, only show that women's leadership in the public sphere is still contested within the society. Meanwhile, debates about female heroes' public appearance indicate that control over women's bodies has been prioritised beyond their bravery and achievements. These narratives only confirm 'the Orientalist' belief about women's position in Muslim societies, as male dominated and controlling. Thus, narratives about women subjugation in Muslim society are not only created by Western writers/colonialists, but also authorities in the very communities from which these women come.

Here, I would like to emphasise that my standpoint is neither against veiling nor based on anti-Western sentiment. As I explained in chapter 2, in this research I want to build an insider perspective as an Indonesian Muslim women, which at the same time is also critical of my own culture. I believe the decision to wear a veil or not to wear one should be given to each person and I am also against the idea of control over anyone's body.

I would argue, the reconstruction of this historical narrative of Aceh's heroine is also part of an effort to strengthen Aceh's identity as a province that has implemented *shari'a*. Keyes (1981, p.5) argued that "ethnic identities implicate a 'primordial' relationship between people". Here, Keyes emphasised identities as the element that connect people to others. Identity describes a person's status and sense of belonging and connection to a group of people that differentiates them from others. *Shari'a* is part of the values that characterise Aceh's identity, especially since *shari'a* was formally legalised in Aceh in 2002. This contributes to the shifting of Aceh's identity. This status differentiates Aceh from the rest of Indonesia, as it is the only province that has an autonomous right to implement *shari'a*. The beginning of the implementation of *shari'a* was marked by the issuance of *Qanun* no. 11 (2002) which included the regulation of people's public appearance. This regulation is particularly applied to women, who are expected to wear a veil and loose-fitting clothes. Thus, women's public appearance became central to the implementation of *shari'a* law.

Reinforcing the implementation of *shari'a*, veiling for women in this case, would be seen as respectful towards religion or even as pious. On the other hand, for politicians, this position benefits them in terms of political populism. In 2016, Pisani and Buehler published a paper about what motivates Indonesian politicians to promote *shari'a* regulations. Since the collapse of the New Order regime in 1998, the numbers of *shari'a* regulations passed by local governments in many provinces in Indonesia have been growing. Between 1998 and 2013, at least 443 *shari'a* regulations were issued all over Indonesia (Buehler, 2016). According to Pisani and Buehler (2016) *shari'a* dress code, such as requiring women to wear a veil, was categorised as a regulation which spurs a local government's Islamic credentials that will increase their popularity among some constituents. As a Muslim majority country, promoting *shari'a* regulations is a populist idea, which could attract many constituents during elections. This applies particularly in Aceh province which prides itself on its Islamic identity as the gateway of Islam in Indonesia, and the only province with an

autonomous right to implement *shari'a* law, as previously mentioned. The situation makes the province prone to the politics of identity in which religion is used as a political commodity by certain groups or parties in order to gain popularity and people's support. On the other hand, this could also lead to exclusion or marginalisation of those who do not share the same identity.

3.2.3 Women, the Aceh Conflict and the Tsunami Disaster

Aceh is one of the provinces with a long history of conflict due to its strong resistance against foreign occupation. During the Sultanate era, Aceh built strong resistance against the Portuguese who wanted to control the Straits of Malacca. After that, during colonial times, Aceh was listed as the most costly war for the Dutch when they occupied Indonesia, due to the people's strong resistance. Since Indonesia's independence, Aceh experienced some more prolonged conflicts (chapter 1). Aceh finally achieved a peace agreement in 2005, deal which was triggered by the devastating tsunami disaster of December 2004. The disaster required urgent humanitarian relief and reconstruction. Thus, both the Indonesian Government and GAM needed to hasten the peace agreement in order to allow international aid to help to rebuild the region, a programme that would have been harder if Aceh had still been a conflict zone.

During the war between GAM and the Government of Indonesia, women's involvement was also fundamental. GAM organised female combatants under its women's military wing, Inong Balee (see chapter 2). Many women joined the rebel group for several reasons, including the death or torture experienced by their family members because of the war, as well as to defend their own people from the national government which was seen as marginalising them (see Santoso and Yuniver, 2009, Marshall, 2002, McCall, 2000).

Aceh's women were also active in initiating peace. In February 2000, about 500 women who had been affected by the conflict called for peace at the first All Acehese Women's Congress known as Duek Pakat Inong Aceh (Kamaruzzaman, 2008). The Congress generated 22 recommendations including the need for dialogue towards peace in Aceh and greater women's participation in the political decision-making. During the actual peace negotiations, there was only one woman involved, Shadia Marhaban, from GAM, still, women's contributions during the whole process of this effort should not be forgotten.

On the other hand, the war killed men, women and children of Aceh. Amnesty International reported there were about 10000 to 30000 people killed and most of them were civilians (Amnesty International, 2013). According to the National Commission on Violence against Women there were 103 cases of abuses against women between 1990 and 2005 (Komnas Perempuan, 2007); 61 were for sexual violence, followed by other cases such as torture, persecution and assault. Violence against women during conflict affects society's attitude towards women in order to avoid cases of abuse or worse happening. Hence, according to Siapno (2013) the prolonged war has made Islamic identity in Aceh more militant and patriarchal, and this restricts women's role and mobility, as discussed in chapter 1.

As previously mentioned, in addition to violent conflict, Aceh also experienced the tsunami disaster when, on 26 December 2004, an earthquake of a magnitude of 9.0 took place beneath the Indian Ocean, which triggered the tsunami. The disaster changed the conflict zone, which until then had not been visited by many people. Suddenly, many people from all over the world were coming to bring international aid and help the recovery process. In an interview with a local woman, Alia, she said:

“Yes, in general there was a strengthening of religious identity, and in Aceh too, so the momentum was the tsunami. I would say, during the tsunami many people from abroad were coming. Aceh back then was still a conflict zone, it had not ended yet. During conflict, we usually... well the characters of people who live in conflict are always suspicious and it's common. Because in the last 30 years, during conflict we did not know who were friends who was the enemy. We always had to be suspicious of people, because we never knew and we were not safe... and during that time there were many issues including apostasy, many foreign organisations [were] thought to bring a Christianisation mission”. (Alia, local woman)

More than USD 7 billion poured in through the international agencies working in the post-tsunami disaster area (BRR and partners, 2006). The people of Aceh, who had lived through war and were then hit by natural disaster, saw many new people and new faces from different cultures.

One concern that was raised during that time was evangelism, as mentioned by Alia, brought by some foreign aid organisations. An Australian based newspaper *The Sydney Morning Herald* and UK based media *The Guardian* reported stories of some volunteers who came to Aceh with missionary assignments (Berger, 2005, Burke, 2005). A missionary organisation based in Virginia, *World Help* planned to move 300

Muslim orphans from Aceh to a Christian children's home, but then had to cancel it after a huge backlash from the local Islamic community, which made the government refuse the organisation's proposal (Cooperman, 2005).

The coming of many foreign people to Aceh brought changes to the society. In Aceh I was told that before the tsunami, coffee shops had been mostly attended by men only, but after the tsunami many female foreigners went to coffee shops either just to have a cup of coffee - Aceh is famous for its coffee - or to meet up. In addition, in many cultures a coffee shop is not a gendered territory but rather a public place for everyone. The coffee shop business grew rapidly in Aceh, and attracted many local young people, males and females, to come either to work or just to chat with their friends. This was not something common for the older generation. When I was there, I was often asked by my landlady and her brother where I was going and when I said, 'I'm going to a coffee shop', they looked a bit confused. On another occasion, I spoke with a woman food seller who told me that in Aceh culture, women were supposed to be at home not around in a public space like a coffee shop.

Field notes, 26 October 2016

Food seller: It's like now, everyone goes to coffee shops - men and women. In the past, it was only men, but now women go to coffee shops as well and sometimes they bring their children there. Many of the women also stay there during maghreb or praying time and sometimes even up to late at night.

Me: Oh, so you do not agree with this, that they are there during praying time and at night and sometimes with their children.

Food seller: Yes, if they are in a coffee shop at night, what about their children, who is going to teach them at home, who will teach them to recite the quran?

Me: I see, what about the men who are also there?

Food seller: Men have occupied coffee shops since many years ago. In Aceh tradition, males should not do anything at home they should be outside.

Me: So, what are they doing?

Food seller: Children, boys should be out playing or studying, while girls should be home helping their family to do housework. So, when the boys grow up they will be responsible to help their sister.

Me: So, males are responsible for their sister?

Food seller: Yes, they help their sister, but then women are expected to get married and she will be her husband's responsibility. In gender equality it means men can also work at home like women, doesn't it? For example, to clean up the garden or yard, in Aceh its only for women.

In this conversation, there is a gendered territory, a place that belongs to men only or women only. The gendered space has shifted, following the tsunami disaster, coffee shops are now visited by male and female customers. This change raised concerns for some people who consider coffee shops as male territory while females belong to the domestic space. This reminds me about the aforementioned indigenous matrifocal culture in Aceh in which Aceh women have power at home; the *po rumoh*, however, seem to have no power in public. As explained early in this chapter, according to Srimulyani (2010) the definition of matrifocality has shifted from the one who owns the house to a housewife. However, if Srimulyani argued it was affected by modernisation, I would say the conflict and the tsunami disaster has also contributed to this change in the society.

The disaster is also often associated with religious narratives in the society. Many people saw the tsunami as a warning from God or even God's wrath for their sinful deeds; and the disaster was a way to remind them to be more devout Muslims (Salim, 2008). According to Salim, for many Acehnese, the disaster brought a message to them to comply with God's law and they believe the government should implement it truthfully. People often pointed out that many mosques were still standing after being hit by the disaster, even though most of the village surrounding them had gone. On the 12th anniversary of the tsunami in 2016, for example, the government's theme was to make the anniversary of the tsunami of 26 December 2004 a moment to repent and surrender to Allah *Subhanahu wa ta'ala* (The most glorified, the most high). Hence, the disaster contributed to bringing about a stronger religious identity which was already prone to being politicised, and could also lead to a discrimination and alienation towards those who do not share the same view and religious identity.

3.3. Conclusion

This chapter provides some historical context, which has affected constructions and re-constructions of gender in Aceh society. It also highlighted how legacies of Aceh's past still remain today and are part of its identities. Within Aceh's indigenous matrifocal culture, women, (*po rumoh* the one who owns the house), have a strong position in the household. However, over time, following many social changes and government policies, the meaning of *po rumoh* has shifted to 'housewife' where they no longer have much power at home as in the past.

The prolonged wars in Aceh built stronger religious identities among the people, especially after the war against the Portuguese in the 16th century, during the Sultanate era in which religious narratives were always echoed by the use of words such as *kafee* to describe the Portuguese and *Jihad fi sabil Allah* (fighting in the path of God) to describe the war. The Portuguese did not only want to control the strategic trading strait, but also brought missionaries. A religious narrative was also used during the colonial era against the Dutch, even though the Dutch mission in conquering Aceh was more to control spice production, particularly pepper. The Portuguese and the Dutch were therefore seen as enemies. The clash of religious narrative against foreign powers, particularly Western power also appeared in post-tsunami Aceh following some international organisations evangelist missions. This cultural clash also affected some gender based programmes as 'gender' is seen as associated with 'Western' values.

On the other hand, historically, relationships with other foreigners were established through trading. Many merchants from the Middle East and India came to Aceh not only to do business and trade, but also to live in the coastal area then marry local people. The cultural assimilation between Aceh and those merchants ran rather smoothly. Hence it is possible that those foreign cultures were absorbed into people's daily life. Additionally, the relationship between Aceh and other Muslim kingdoms also expanded to education, politics and military co-operation during the Sultanate era. As explained earlier in this chapter, Aceh absorbed some traditions and cultures from its Muslim allies including the requirement to wear Arab dress for the kingdom's officials in the 16th century. The smooth assimilation between those cultures created a hybrid culture, values that are seen as part of what is called Aceh culture now. Before the coming of Islam, for instance, according to Marco Polo, many people lived in this

region were pagan. However, when Islam was introduced, it became an integral part of Aceh's identity until today. The Arabic character and dress which was made official during the sultanate era, became part of Aceh's identity that has now been legalised through local law or *qanun*.

This chapter also explored Aceh's pride in its history where women played significant roles. Histories of female leadership in Aceh, either in the 17th century during the sultanate era or during war against the Dutch colonials, are glorified until the present day. People are proud of their past history of having female leaders, however, in current daily life few people seem to be interested in discussing how women could have been leaders in an Islamic society at that time. How did religious scholars or *ulama* deal with the issue during the sultanate era? Why did the queen's era end after almost 60 years and why was it never repeated? A male speaker once mentioned the lack of interest in these women's achievements, during the aforementioned seminar 'Women in the Historical Trajectory':

"I think, discourse about women in Indonesia and in Aceh in particular, it is all only being used to support glorification towards men. It is almost certain! For example, the recent case about Cut Meuthia, what was the criticism toward Cut Meuthia? Her veil! Nothing else, not about how she led a political organisation at that time, for example. Not such a thing as that!" (Azhari)

Discussion in this chapter confirmed Azhari's criticism about the lack of interest in narratives about women in Aceh history. Women's leadership is only a narrative that has always been echoed to counter those who argued that the society was becoming more patriarchal and gave no space for women in public leadership. However, in reality, women's efforts to compete on the political stage are often curtailed using religious discourse. It happened during the sultanate era and in the present day.

Overall, this chapter highlights the dynamics within Aceh's history that transformed the society in various ways. Religious narrative has played a key role and has often been used in resistance movements, from the war against the European empires to the war against the Indonesian government. Then, in 2004, Aceh was hit by the tsunami. The region that had been isolated from the outside world due to the prolonged conflict, was suddenly filled with international aid and donors, foreigners from all over the world. This thesis argued that all these dynamics, since the war against the European empires; the prolonged conflict with the Indonesian government

and its gender ideology policy under the New Order (1967–1998); and the tsunami disaster have brought about a stronger religious identity and, in addition, contributed to the diminishing of Aceh's traditional matrifocal culture.

Chapter 4. Gender Construction within Aceh's *Shari'a*

This chapter examines how gender is constructed within local *shari'a* law in Aceh, particularly in terms of how men and women should behave. Many new local *shari'a* laws or *qanun* have been passed, following the first one of 11/2002. In this chapter I focus on some of them, particularly those that regulate how people should behave. As mentioned in chapter 2, six regulations will be analysed: 1) *Qanun* no.11 (2002) on religious affairs, worship and religious symbols; 2) *Qanun* no. 6/2014 about *jinayat* (criminal) law; 3) GI no. 02/INSTR/2014 about policing cafes and internet services in Aceh; 4) CMI no.1/2015 about supervision and policing of tourist services/recreation/ entertainment and internet services, cafés/other similar services and sports facilities in Banda Aceh city; 5) and its revised version, no.2/2015. The sixth, GR no. 10 (2005) on technical guidance for implementation of *uqubat* (punishment) by caning will be discussed in more detail in chapter 5.

The laws analysed in this chapter regulate people who live or visit Aceh, in several aspects, including religiosity, public appearance, morality, behaviour, mobility and sexuality. In this thesis, I would like to emphasise that *shari'a* here refers to the local codification often called as *shari'a* law. This research analysed some local *qanun* (local *shari'a* regulations at the provincial level), and some other local regulations (made by the governor or city mayor) in the name of reinforcing the implementation of *shari'a* as part of Aceh's autonomous rights.

As mentioned above, this chapter aims to find out how gender is constructed within local *shari'a* law and how men and women should behave accordingly. The terms 'gender' and 'sex' are often used interchangeably (Mikkola, 2017), however some scholars have distinguished the two terms. According to Stone (2007), many feminist scholars have discussed the distinction between the two since the late 1960s. Sex is defined as a biological attribution at birth, while gender refers to the "social expectations" and characteristics counted as feminine and masculine (Stone, 2007, p.30). Gender construction is determined by the culture and society and at the same times the biological sex dictates gender expectations towards people in the society. In the case of Aceh for instance, a woman is expected to wear skirts instead of trousers and vice versa for men. Those who breach this expectation are considered as deviant. In the case of transgender women, the police have been heavy handed. In January 2018, police raided some beauty salons in Aceh, where there were transgender

women; the police then cut their hair, gave them male outfits and told them to speak in ‘masculine’ voices (The Guardian, 2018; BBC, 2018). They were also held for a few days to get counselling and be coached to become ‘normal’, according to their biological sexes at birth. This example highlights how gender expectations towards people were determined by their biological sexes. Regarding LGBTQ (lesbian, gay, bisexual, transgender and questioning/queer) local *shari’a* only mentioned about lesbianism (*musahaqah*) and gay relationships between men (*liwath*). However, at a national level, the Indonesia Islamic Council (MUI) declared LGBT and homosexuality as deviant and as diseases that need to be cured.

In Aceh, the term ‘gender’ is also often misinterpreted and associated with Western values (See chapter 2). When I mentioned it to local people they often saw it as women wanting to outperform men; to deny their ‘*kodrat*’ or destiny to bear children; and used examples of women occupying (male) public space, such as a coffee shop (see chapter 3). Sentiment towards this term also could be linked to the post-tsunami period, as discussed in chapter 2.

In the case of Aceh, I would argue that gender construction is influenced not only by culture and the society, but also central, state or local government policy (*shari’a* regulations), the prolonged conflict (see chapter 3), sentiment towards Western values, the political situation as well as religious discourse. Within the religious discourse, the construction of gender is often linked to Islamic tradition, in which many interpret men as the head of the family, the guardian, who can use any necessary measure in order to ‘protect’ their family.

This chapter discusses how men and women are expected to behave in Aceh. According to Yuval-Davis (1997) Women are seen as a burden and marked as a collective symbol, which represents the society’s honour, thus women’s bodies are expected to represent the application of Islamic law in Aceh. The state (local government) has imposed cultural uniformity onto women’s bodies, to unify a standard model of femininity.

The first section discusses the laws mentioned above and how they expect women and men to behave. I highlight Michel Foucault’s concept of discipline and punishment to discuss the Aceh government’s effort to ensure local *shari’a* law is followed. The second section focuses on the practice of *shari’a* in the society, how people’s practice is constructed by the government, and the gender discourse that exists.

4.1 Disciplining Society

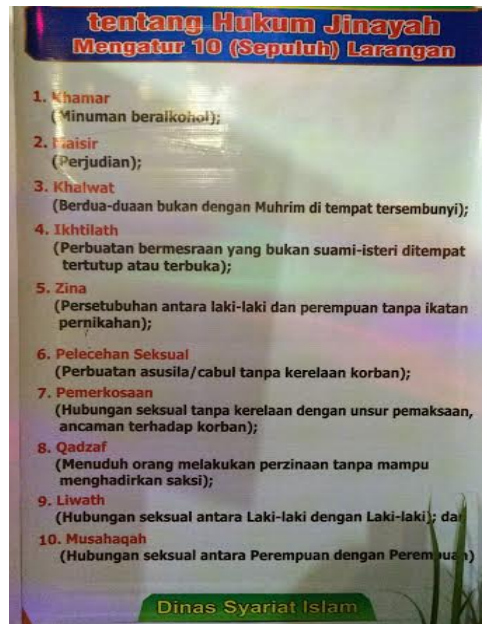


Figure 4.1:

Qanun Jinayat regulates 10 forbidden things:

1. Drinking alcohol
2. Gambling
3. *Khalwat* (being together with a *non-muhrim* or unmarried and non-blood relative in a quiet place)
4. *Ikhtilath* (unmarried couple being romantic behind a closed door or in an open space)
5. *Zina* or sex without marriage between a man and woman
6. Sexual harassment (immorality/obscenity without victim's willingness)
7. Rape (Sex without willingness, with force and threat towards victims)
8. *Qadzaf* (accusing people of committing adultery without being able to present witnesses)
9. *Liwath* (Sex between man and man)
10. *Musahaqah* (Sex between woman and woman)

The Islamic Shari'a Department

This banner was exhibited at the *Shari'a* Police stand during *Piasan Seni*, an arts festival at Taman Sari, now known as Bustanussalatin Park. It lists ten activities which are banned according to *Qanun Jinayat*, which is one of the latest to be passed by the Aceh government, and has raised some controversy and criticism. In 2017, for example, some NGOs belonging to the Civil Society Network for Advocacy of *Qanun Jinayat* criticised it saying that it was against the Indonesian State Constitution and discriminates against women (BBC, 23.10.2017). One law that was criticised a lot is regarding rape, in which the rape survivor is required to provide witnesses or evidence. If they cannot, they may take an oath to God. However, if the accused denies the accusation and also takes an oath to God, swearing their innocence, they will be free from any charge.

In addition to this, the *Universal Periodic Review* published by Solidaritas Perempuan (SP) in 2016 also criticised some other aspects of the law as well. The report claimed that it was one among a total of 421 discriminative policies in Indonesia. The report criticised its claims to be based on Islamic law and that it only acknowledges one single interpretation of religious text, ignoring diversities within Islam and Aceh society (Solidaritas Perempuan, 2016). The law also does not consider diversities in the society as it applies to all people, regardless of their religion or

belief. Additionally, it was claimed that it was violating people's privacy as it regulates *khalwat*, *ikhtilath* and *zina*.

As this chapter aims to analyse how gender is constructed within local *shari'a* law and how women and men should behave, I will now focus on what kind of regulations and requirements are applied to people, by analysing the documents mentioned above. The texts are written in Indonesian, but also use some Arabic terms and religious text. The table below demonstrates what elements of people's lives are regulated within the law. As can be seen, they regulate the society in many different aspects:

Table 4.1: Regulating Society

1. *Qanun* no.11 (2002) on religious affairs, worship and religious symbols.

Regulating	Women	Men
Public Appearance (Covering <i>aurat</i>) Article 13	Islamic dress (covering <i>aurat</i> and women must wear a veil, and loose fitting clothes)	Islamic dress (covering <i>aurat</i>)
Religiosity/Mobility (Friday Praying) Article 8	Not applied (Not compulsory for women)	Must go to Friday prayer (Compulsory)
	People are not allowed to do any activities that would hinder or affect those who pray	

2. GR no. 10 (2005) on technical guidance for implementation of *uqubat* (punishment) by caning.

Regulating	Women	Men
Punishment (Public flogging ceremony) Article 9	Wearing thin clothes provided that it covers her/his <i>aurat</i> .	
	Sitting	Standing

3. *Qanun* no. 6/2014 about *jinayat*.

Regulating	Women and Men
Morality and Behaviour	<i>Khamar</i> (Articles 15 & 16)

	<p><i>Khamar</i>, an intoxicating, alcoholic drink of 2% or more. Drinking alcohol, producing, buying, keeping, bringing/carrying alcohol or giving it as a present.</p>	
	<p><i>Maisir</i> (Articles 18, 19 & 20)</p> <p>Maisir is an action containing the element of betting and/or an element of gambling made between two parties or more, accompanied by an agreement that the winner will get paid/profit from the losers either directly or indirectly. Gambling and providing facilities or finance for gambling</p>	
	<p><i>Khalwat</i> (Articles 23 & 24)</p> <p><i>Khalwath</i> is the act of two people of different sexes, being in a closed or hidden place; not <i>Mahram</i> (husband or blood relatives), with no marital ties, and being willing to lead to the act of Zina</p>	
	<p><i>Ikhtilath</i> (Articles 25-32)</p> <p><i>Ikhtilath</i> is the act of romance like making out, touching, hugging and kissing between a man and a woman who are not a husband and wife, with the willingness of both parties, either in a closed or open place.</p>	
	<p><i>Zina</i> (Articles 33-45)</p> <p><i>Zina</i> is intercourse between a man or more with a woman or more without marital ties with the willingness of both parties.</p>	
	<p>Sexual Harassment (Article 46&47)</p> <p>Sexual Harassment is an act of immoral or obscene acts committed personally in public against either men or women, as victims, without their consent.</p>	
	<p>Rape (Articles 48-56)</p> <p>Rape is sexual intercourse, with the <i>faraj</i> (vagina) or rectum of another person as a victim by an offender or another object used by the perpetrator against the victim's <i>faraj</i> or penis by the perpetrator's mouth or against the victim's mouth by the offender, by force or by coercion or threat to the victim.</p>	
	<p><i>Qadzaf</i> (Articles 57-62)</p> <p><i>Qadzaf</i> is accusing a person of <i>Zina</i> without being able to file at least 4 (four) witnesses.</p>	
Sexuality	<i>Musahaqah</i> (Article 64)	<i>Liwath</i> (Article 63)

(Article 63 & 64)	<i>Musahaqah</i> is the action of two women or more by mutually rubbing limbs or <i>faraj</i> to obtain sexual stimulation (pleasure) with the willingness of both parties.	<i>Liwath</i> is the deed of a man by placing his <i>zakar</i> (penis) into the other male's anus with the willingness of both parties.
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4. GI no. 02/INSTR/2014 about policing cafe and Internet services in Aceh.

Regulating	Women	Men
Religiosity (No. 3a & b; 4d)	Café/Cyber cafe Management should stop activities during and close to Magrib prayer time and Friday prayer. Encourage customers to pray during praying time	
Public appearance (No. 3c & g; 4f)	Waiter, waitress and customers must wear Islamic dress	
Mobility (No. 3d; 4g)	Not allowed to work beyond 9 p.m.	Not applied
Mobility (No. 3f)	It is forbidden to serve women customers who are not with their <i>mahram</i> beyond 9 p.m.	Not applied
Morality (No. 4k)	Cyber cafés should forbid males and females who are non- <i>mahram</i> to access the internet together	

5. CMI no.1/2015 about supervision and policing tourist services/recreation/entertainment and internet services, cafés/other similar services and sports facilities in Banda Aceh city.

Regulating	Women	Men
Mobility (No. 1.13)	Female employees should not work beyond 10 p.m.	Not applied
Public Appearance (No. 1.14)	Employees at Cafés, Cybercafés, and sport facilities should wear dress in accordance with <i>shari'a</i>	
Mobility (No. 1.16)	Service towards female customers is only allowed until 10 p.m. except if they are with their husband or family	Not applied

6. CMI no.2/2015 about supervision and policing tourist services/recreation/entertainment and internet services, cafés/other similar services and sports facilities in Banda Aceh city.

Regulating	Women	Men
Mobility (No.1.13)	Female employees should not work beyond 11 p.m.	Not applied
Public appearance (No. 1.14)	Employees of cafés, cybercafés, and sport facilities should wear dress in accordance with <i>shari'a</i>	

The tables above demonstrate regulations applied to women and men in Aceh, and how they are expected to behave according to the law. The law also mentions punishment for those who breach the regulations. Regulation and practice of punishment will be discussed in detail in chapter 5. As can be seen, the laws (*qanun*) regulate the society in many different ways: public appearance; religiosity; mobility; morality and behaviour, even the most private aspects, such as their sexuality, with punishment for those who breach these regulations. In many cases, the five main themes regulate women and men in different ways.

To begin with, I read the law and investigated the language used and how it is written, in Indonesian but with many Arabic terms also being used. This indicates how the province has been influenced by Arab values which is seen as where Islam comes from. I would argue the use of Arabic terms is to build proximity with the original language of the religious text itself and to make it seen as more Islamic. However, Abdurrahman Wahid (2006) warns that people in Indonesia need to differentiate between Arab values and Islamic values. He argued that people's lack of confidence in Western modernisation and advancement has caused them to subordinate themselves towards Arabic values which could make them feel more Islamic. Here, we can see the sentiment of a postcolonial country where people have tried to differentiate themselves from the European colonial powers.

On the other hand, the effort to insert Arabic into local law also shows how the province negotiates with foreign values, which indicates a so-called hybrid culture. As discussed in chapter 3, soft penetration of Arab values through trading and marriage with local people helped the acculturation process. Arab values then became part of people's identity. For example, *Qanun* no. 11/2002 Chapter V Article 12 about the

implementation of Islamic dissemination, mentions that the government and community institutions recommend the celebration of Islamic feast days. The law also recommends all government, private and community institutions to use Malay Arabic writing in addition to Latin text.

The two *qanun* analysed in this thesis begin with the religious text “*Bismillah ir-Rahman ir-Rahim*” (In the name of God, the Most Gracious, the Most Merciful). This is a common practice in Indonesia, a country with more than 200 million Muslim followers. The text is then followed by the words, “Governor of Aceh Province”, which indicates the highest authorities at the provincial level who authorise and legislate the law. The law also claims to be based on the Quran, the holy book of Islam, and the hadith. *Qanun Jinayat* no. 6/2014, for example, states that it considers: “the Qur’an and Al-Hadith are the main basis of Islam that brings grace to the whole universe and has become the conviction and foundation of Acehnese society”.

The usage of religious text at the beginning of the law demonstrates how Islamic identity has been brought into official documents. It indicates an attempt to make Islam the province’s identity. Being associated with Islam also strengthens the image of the law as God’s law. In addition, the *qanun*’s claim of the Quran and hadith as the basis of the law is perceived as an effort to reinforce God’s rule in the region, which makes the government be seen as religious. However, with that claim, the interpretation of religious text in the Quran and hadith is reflected in the regulations mentioned in the *qanun*. It has produced regulations that involve a single interpretation of religious texts, particularly in several aspects, as mentioned in the table above. This has led not only towards a homogenised interpretation of religious texts, but also an attempt at homogenising the society.

However, even though the law is based on the Quran and hadith, it only acknowledges one single interpretation of the religious text. The first *qanun*, which marked the beginning of the implementation of *shari’a* in Aceh is *Qanun* no. 11/2002; one of its points is requiring people to wear Islamic attire. In the explanation section of the law, it mentions Islamic attire should protect the *aurat*, not be transparent and not show the shape of the body. In addition to that, leaders of government, educational, business and community institutions are also expected to be responsible regarding the implementations of these regulations at their workplace, including during sport or exercise sessions.

As a matter of fact, there is no so-called Islamic attire for men, as many Islamic scholars agree that men are only obliged to cover from their navel to knees. In addition, many Islamic scholars debate which part of the women's bodies should be considered as *aurat*. Instead of discussing how different interpretations have been developed regarding women's *aurat*, the government decided to enforce and promote one single interpretation of how women and men should appear in public, while at the same time eliminating other different interpretations by Islamic scholars in this field. The law not only regulates how people should appear in public space, but also compels certain people to be active participants to support and promote this regulation in their institutions to make sure it is being enforced and implemented. In addition, the government, through its *shari'a* police institution, WH, has conducted dress raids, and those women who do not veil have their names recorded and are warned not to do it again.

Other efforts to regulate women's public appearance by promoting the idea of 'proper' dress, are through banners promoting how women's attire should be.



Figure 4.2

This banner is displayed at the office of the Department of Islamic *Shari'a*, and I was informed during my fieldwork in Aceh that it has also been placed in many other government offices and the public university. Beneath the heading, “The Department of Islamic *Shari'a*”, the translation of the text is as follows:

How to dress according to *Al Quran* and hadith. It shows the Prophet's

words: “Girls that are mature enough, should not be seen except for their face and both of their palms to their wrist” (Abu Daud). The veil must be long and covering chest, dress must be long and loose-fitting, dresses must be long-sleeved and covering wrist, clothes must be long reaching to the ankle, socks must be worn, soundless high-heels (if you wear high heels, they should be soundless, and make sure heels are made of rubber).

The banner highlights how the government focuses on regulating women’s bodies and appearance, there is no banner made for regulating men’s attire. It also shows three different pictures of the ‘wrong way’ to dress. The first picture is a woman character wearing a veil and a body shaping outfit. There is a note next to the picture saying, “the wrong thing in this picture is tight clothes and showing the shape of the body”. It is followed by, a quote from the Prophet: “Shall you lend her long and loose fitting clothes”. The second picture shows a woman wearing a shoulder length veil and loose fitting dress, saying, “The wrong thing in this picture is that the veil does not cover the chest, Allah mentioned in the Quran chapter An-Noor, verse 31: “they should wear a veil to cover their chest”. And the last picture in the section is a woman wearing a veil and high heels, and the explanation next to it saying, “The wrong things in this picture are as follows: the veil does not cover the chest, the tight outfit shows the body shape, she is wearing short clothes, and no socks”. This is followed by “Indeed, hell’s residents are those women who are dressed but naked, who are inclined toward immorality and attract others to commit immorality. They will not go to heaven and will not smell it”. There is no explanation regarding the sources of the last quote, however it refers to the Prophet’s words.⁹

Homogenisation of women’s dress is in the making: the banner shows one ‘correct’ way of how women’s clothes should be, while the rest are called “the wrong way”. This official banner from the *Shari’a* Department also uses certain religious texts to justify all the rules of the ‘correct’ and the ‘wrong’ way to dress. In addition, the placement of the banner in government buildings and public places has the public as its target audience.

The law itself at the beginning mentioned in *Qanun* no. 11/2002 only required women to cover their *aurat*, by not wearing tight and transparent clothes. Now, after more than fifteen years, the government also recommends women to wear one kind of

⁹ <https://www.republika.co.id/berita/dunia-islam/islam-nusantara/18/10/17/pgqiq9313-santun-berpakaian>;
<https://www.malaysiakini.com/letters/121048>

dress style, which is beyond all requirements mentioned in the law. Government efforts to promote this law are also mentioned in the GR as well as Banda Aceh CMI which require employees of business entities in tourism and the entertainment industry to wear Islamic attire in accordance with *shari'a*.

The government never discusses the context of the religious texts it uses in its policies. The religious text is used as a single entity and order but its context is never discussed to inform the public and make them understand why one such regulation in the past was made. So, the public is indoctrinated by one single interpretation of a religious text.

Within the same *qanun*, the government also regulates people's religiosity and mobility by instructing them to go to Friday prayer. Even though the regulation mentions all people must do Friday prayer, in practice, this obligation only applies to men, while women, along with other people who are not Muslim are expected not to do any activities that would not hinder the prayer service. However, the regulations also advise mosques to provide space for women to pray during this time. Regulations to control people's religiosity and mobility can also be seen in regulations, such as GI no. 02/INSTR/2014, CMI no.1/2015 which was then replaced by CMI no.2/2015, regarding business operators in the tourism and entertainment industry. The GI requires business operators to stop their activities during Friday prayer time and *Maghrib* (prayer time after sunset) every day. The instruction also requires business entities to provide praying facilities and advise customers to pray during prayer time. The government claims the regulations on people's religiosity are intended to encourage Muslims in Aceh to increase the quality of their faith and observance to God. In this regard, it considers itself as having responsibility to not only support people's religiosity but also to control people in practicing their religion in everyday life. People's faith has become a public rights issue, which could go beyond government control but also society, following the implementation of *shari'a* as the rule of law. How the society has responded and acts regarding the implementation of *shari'a* will be further discussed later in this chapter.

In addition to regional leader's orders, both the CMI and the GI regulate business entities regarding female employees and female customers at night. GI require enterprises to bar women employees from working after 9 p.m. and refuse service to female customers who do not come with their *mahram* after this time. Following this instruction, the mayor of Banda Aceh passed CMI no.1/2015 which

has the same order but extended the time to 10 p.m., which the media refer to as a “partial curfew”.¹⁰ The mayor later replaced this instruction with CMI no.2/2015 after receiving many complaints. The new instruction further extended the time for female employees to 11p.m., and lifted instructions regarding service towards female customers.

This regulation is indeed echoing the prohibition of female night labour in Europe, first introduced in England in 1844, which then was followed by Switzerland in 1877, Austria in 1885 and France in 1892. In 1925, the Dutch government, through its proto-parliament in the Dutch East Indies *Volksraad* or People’s Council, discussed a bill to eliminate female night labour. Following this trend, the Dutch also wanted to bring its culture and values to the colony. At that time in the Netherlands a married women was expected to be a housewife, working outside the domestic space was believed to be ‘detrimental’ for the healthy family relations (Platenga, 2018). Thus, the discussion about female night labour was raised in the colonies after the same approach had been implemented in the Netherlands in 1889.

According to Locher-Scholten (2000) in the *Volksraad*, whose members were all male, there were two different viewpoints raised during the discussion of this bill. One viewpoint was from the European member in the council as well as progressive native member who had a Western educational background. This group has two main arguments: *first* that women belong to the weaker sex and the night labour was too hard and demanding for them thus they should be protected from this; and *second* that a woman’s place is with her family to look after her husband and children, hence working at night would not be suitable for them as she would neglect her husband and children at home (Locher-Scholten, 2000). Another viewpoint coming from *Volksraad* members with experience in the colony was that Eastern culture or *adat* was different from the West and women’s labour in this region was relatively equal to that of men. However, this viewpoint was actually influenced by economic values due to the need for female labour in some large-scale industries, such as sugar and palm oil factories, particularly during harvesting or grinding periods (Locher-Scholten, 2000). Thus, during this period under Dutch colonialism, women’s bodies and mobility were also subject to regulations from all-male council members.

¹⁰ See <http://america.aljazeera.com/articles/2015/6/10/indonesias-aceh-sets-partial-curfew-for-women.html>

In the current time, in the case of Aceh, the city mayor of Banda Aceh claimed the CMI are to protect women who work in the tourism and entertainment industry against overwork and harassment (Humas Banda Aceh, 06.06.2015). The first claim here is similar to the debate in the *Volksraad* above in which women are categorised as the weaker sex. The city mayor's claim was also criticised by the National Commission on Violence against Women which argued that this regulation has limited women's mobility. The Commission also said if the government cared about women as victims of harassment, they should consider educating the potential perpetrators (Rappler, 04.06.2015). The idea of reducing sexual harassment by asking women to cover themselves or keep them away from public space is rooted in a patriarchal standpoint. This concept perceives harassment as something that happens because women are 'asking for it' and involves blaming the victims instead of regulating how men should behave and control themselves. Regulations regarding the partial curfew were only implemented and reinforced for a while after receiving a lot of criticism from people and watchdog organisations. However, the regulation itself has never actually been withdrawn.

In 2014, the government passed a more controversial law, *Qanun Jinayat* no. 6/2014 that not only applied to Muslim followers in Aceh but also members of the non-Muslim community. Article 5 of the law says:

The *qanun* applies to: a. All Muslims who have committed a crime in Aceh; b. All non-Muslim followers who have committed a crime in Aceh together with Muslim followers and those who voluntarily choose to obey *jinayat* law; c. All non-Muslim followers who have committed a crime that is not regulated by the Penal Code of Indonesia (KUHP) or other penal regulations, but is regulated in this *qanun*; and d. all business entities in Aceh.

This shows there is a shift within *Qanun* no. 11/2002 as when it was first implemented it did not mention explicitly how it affected the non-Muslim community, but the recent *Qanun Jinayat* no.6/2014 clearly mentioned that it applied to all people either Muslim or non-Muslim followers, particularly regarding all rules not regulated by the Penal Code of Indonesia. Even though the first section mentions that the law only applies to Muslims, the next section said states it applies to non-Muslims who agree to follow this law voluntarily. When the crime is not regulated in the Penal Code of Indonesia, a non-Muslim follower must abide by this law. *Zina*, *ikhtilath*, *khalwath* are not regulated by current national law, which means non-Muslims who

commit these acts in Aceh will be punished according to this *qanun*. Additionally, Article 72 of this law also mentions that in the case that one crime is regulated in both the Penal Code of Indonesia and *Qanun Jinayat*, then the one that is applied is the one mentioned in the *qanun*. Hence, it means in most cases, local *qanun* law is the one applied if someone has committed any violations towards the ten ‘crimes’ regulated in the *Qanun Jinayat*, regardless of their religion or belief. Therefore, the law goes beyond homogenising the interpretation of religious text, but also homogenises the society by making everyone, including those who have different beliefs and religions, follow it.

As can be seen from the table above, *Qanun Jinayat* regulates people regarding their sexuality, morality and behaviour. This law regulates the most intimate and private parts of the human body so that people’s sexuality, relationships and activities with their partner are part of the state’s business. The *qanun* states clearly that same sex sexual activities are forbidden and considered as a crime. Those being caught committing this crime will be punished with up to 100 lashes of public flogging, a penalty of up to 100 grams of pure gold or a jail sentence of 100 months.

All this *qanun* highlights how government interpretation of religious text is made legitimate and powerful as it is made into laws that control and regulate people, especially women. According to Smart (1990, p.10) the “law sets itself above other knowledge like psychology, sociology, or common sense. It claims to have the method to establish the truth of events”. This represents the situation in Aceh in which laws, particularly *qanun* set a standard of knowledge that must be followed by the people. Therefore, the government has a legal and legitimate right to control, discipline and punish people through the *qanun* that is presented as the interpretation of religious text, Islam, a religion followed by the majority of the society.

4.2. Institutionalising the *Shari’a*

In order to make sure that the law is enforced, the government also has institutions to support the *shari’a* practice in Aceh, such as the Shari’a Court, the Aceh *Ulama* Council, and the WH, which are in charge of overseeing the implementation of *shari’a*, with the rights to punish offenders. In the case of people who breach the Islamic attire regulations as mentioned in *Qanun* no. 11/2002, they will receive *ta’zir* (punishment) after being warned and ‘re-educated’ by the WH. Thus, the

formalisation of *shari'a* in Aceh is followed by its institutions producing regulations, supervising their implementation and conducting punishments on those who breach the law, which highlights the unequal power relations in which some are responsible for producing and enforcing the law while others are only subject to it.

The phenomena that I have been analysing in this chapter accords with the view of Foucault (1991) that discipline is an essential key to domination. He argued that it “produces subjected and practiced bodies, ‘docile bodies’”(Foucault, 1991, p.138). In order to produce docile bodies, there are three modern means needed, which are hierarchical observation, normalising judgement and examination (Gutting, 2005). Hierarchical observation means there is an observation mechanism to control people’s activities. In the case of Aceh, through the institutionalisation of *shari'a*, the WH actively conduct patrols and public raids in order to discipline people in following the *shari'a* regulations.

The second means as mentioned by Gutting is normalising judgement, in which people are expected to follow certain standards. The standard is a necessary means to control people, so if they are different they would be seen as abnormal, deviants that might need to be ‘normalised’. The next section will highlight how this normalising judgment affects those who do not follow or criticise the standard norms that are applied in the society.

The last one, as mentioned by Gutting (2005, p.84-86), is examination, which combines hierarchical observation with normative judgement to control people’s behaviour. People are watched and scrutinised to judge if they meet the norms set. In the case of Aceh, through the WH, the government controls people’s bodies and behaviour to follow the standard it set in the local *qanun*. An act of ignoring the norm could lead to social punishment, warning to not repeat the same mistake or even public humiliation, such as punishment by flogging in a public space. There is no specific schedule of when a public raid is going to be held, so people think they are being constantly monitored, hence they need to be prepared and not risk being caught. Those who are caught will get their name written down and be warned not to repeat the offence again, so they must, for example, wear ‘proper’ Islamic attire. A woman I met during my fieldwork told me her experiences of being caught in a dress raid twice. The second time she was caught, the officer realised that she had been caught before and been warned. He shouted at her, “If I catch you once again, I will put you in jail!”. According to *Qanun* 11/2002, Article 23, those who do not wear Islamic

attire would be liable to *ta'zir* after being warned and coached under the WH. The law does not mention details about the kind of *ta'zir* for this case, unlike other offences such as missing Friday prayers up to three times, which would be penalised by up to six months in jail. Neither does the law mention details about what it means by *ta'zir*. According to Mir-Hosseini and Hamzić (2010, p. xvii) *Ta'zir* is “discipline; punishments that are at the discretion of the judge”. *Ta'zir* is a punishment for some offences that are not even being regulated or mentioned in religious text, hence the judge is given the right to decide what kind of penalty can be given for a violation. This demonstrates that according to local *qanun*, people’s public appearance is subject to *ta'zir* (punishment) and at least two government bodies/officers, the WH and the judge, could exercise their power to discipline the society.

In *Discipline and Punish*, Foucault discussed the panopticon design of Jeremy Bentham from the late 18th century. Panopticon is a prison architecture design with a central observation tower for the guards which make the prisoners feels they are under constants surveillance at all times (Bentham and Bozovic, 1995). Foucault suggests that power is visible and people are constantly aware that they might be being monitored at any time, which makes them think they are always under the surveillance (1995, p.201). This disciplines them to follow the regulations. As mentioned above, in the case of Aceh, the routine patrols and public raids of the WH make their power visible but at the same time unverifiable as people do not know when they will happen, so they constantly think they are being watched. In the next stage to this, those who do not follow the order would be seen as deviant or ‘abnormal’ and this distinguishes them from the rest of society. This is one step towards a homogenised society, in which people are expected to follow strict orders particularly with regard to public appearance.

I would now like to start with a discussion about the production of the law itself, which has become a norm in the society. Aceh’s House of People’s Representative (DPRA), with the approval from the Governor, is responsible for drafting *qanun* at the provincial level. In drafting policies, the government also needs to consider any advice from the Majelis Permusyawaratan Ulama (Aceh Ulama Council) that acts as the government’s equal partner and is also responsible to pass any religious *fatwa*. This religious body also gives government advice regarding the findings of the *shari’a* police. According to the law, in drafting *qanun*, the

government must also listen to the public's views. However, in my research, a number of people claimed their advice was never taken into consideration.

If today the face of *qanun shari'a* seems to be dehumanising people, treating humans just as mmm... [it] does not respect human nature etc. I think because it [qanun] is a political product [made] to answer some political interest and it does not represent the majority of the society. Yes, they did ask and consult on it [qanun], took it to the university and so on, but all those processes and advice were never taken when the *qanun* was being legalised. (Alia, local woman)

In 2009, the legislation of *Qanun Jinayat* was postponed, as women activists pushed for it to be postponed because it did not protect women. But, at that time the governor was Irwandy, he is smart and he rejected it as well. He asked for it (*qanun*) to be postponed as well, so that is probably why women (activists') concerns and the governor's matched. But then in 2014 it was legalised, we had hoped as some women activists had given their advice, but the more advice they gave, the thicker the *qanun* files and the implementation is more unclear... random. [They said] they had taken women activists' advice. Yes, women activists gave advice but the content was not like that. (Hadijah, local woman)

At the end, the final result of the *qanun* was in the government's hands, particularly the DPRA and Governor, as provincial leader responsible to legalise the draft. After the *qanun* has been passed into law, other government institutions, such as the WH and the *shari'a* court were responsible for its reinforcement and implementation.

The WH often conduct public raids in order to ensure that people are following regulations as mentioned in the *qanun*. Along with dress raids, they often conduct other operations. Every Friday, female officers conduct patrols to oversee if there are men who do not go to mass prayer, or business entities that stay open during Friday prayer. Regarding dress raids, this operation is usually held on public roads, subjecting people who are not wearing 'proper Islamic attire', to inspections. Those who are caught are mostly unveiled women or those wearing tight outfits. As a government body that has power to reinforce *shari'a*, the WH are known for their arrogance, particularly during public raids. Masyitah, a resident of Banda Aceh described her experience of being caught by the *shari'a* police during a dress raid:

I was caught in a dress raid, then there was a lady, she was big so the clothes ... well actually the clothes were already [big]. Because she was really big any clothes would only just fit her, but she was scolded, and told

off. Then I said [to the shari'a police], 'Why are you shouting at her? She is big, any clothes she wears will just fit, there is no way she can just wear a sarong [long big fabric] to go around. If there is a [motorbike] accident [because of] her clothes getting stuck in the motorbike's wheel spokes, who wants to be responsible? Does the WH want to be responsible for that?'. Then after that, the shari'a police did not talk to me anymore. If all women are required to wear skirts, then the skirt gets stuck in the wheel spokes, they could fall and cause accidents, will the WH pay for the hospital?

Like Masytah, Fatimah also had a similar experience of dealing with the arrogance of the WH in reinforcing the *shari'a*. She and her friend were caught for not wearing a veil a few years ago, when they were at a café at around 8 p.m.

Fatimah : When we were at the cafe, there were other customers, a police officer with his girlfriend who was not wearing a veil as well. We just started eating our food when the cars/vans came, first only one then another four cars came. At the beginning, we took it easy as we thought they would not shout angrily at us, nor be arrogant. So, we decided to pay for our food first as we did not want to just run away and leave the café without paying for our food; some other people were already running [trying to escape]. We were called [by the shari'a police], they do it in groups so not only one person but many of them and they interrogated us asking our names and so on. They 'judged' us, saying all negative things like what kind of women we were, have we never had any religious lesson etc.

Me : Was it the WH?

Fatimah : Yes, from the WH and they were rude. Also, those who spoke were not the only ones, but many of them liked attacking us, so we did not know what to say. Then I realised there was that police officer with his girlfriend who was not wearing a veil as well. So, I said 'Sir why are you only mad at us? Look there she is not wearing a veil as well'. So, they went there, and I took that opportunity to escape. But I heard that man say, 'I am an officer', so does it mean it was OK for the officer and not for ordinary people? But then I just wanted to run while I got the chance.

I would argue the apparent arrogance of the WH officers comes from their position as members of a government institution with the rights to enforce *shari'a* regulations. It gives them power to argue that they are doing the right thing, not only based on law but also their religion. The concept of *amar ma'ruf nahi mungkar* (commanding the good and forbidding the evil), which is always echoed in religious narrative in

Indonesia, and Aceh particularly, is used as justification. This religious concept is not only used by government officials, but also those in the society who are keen to reinforce *shari'a* in the name of defending what is always claimed as God's law.

In this situation, people have no other options but to obey the rules, any disobedience would lead to punishment, as the government, through its institutionalised *shari'a* body, has coercive power over the people. Here I would borrow the concept of coercive authority by El Fadl (2014, p.50) who defines it as power to control others and make them obey anything through persuasion, benefits, threats or even punishment. In the case of Aceh, I would say that the government is exercising coercive authority to implement its *shari'a* codification, by convincing the people, who are proud of their Islamic identity. People believe that they have responsibilities to uphold God's law on earth, hence the government narrative is perceived as part of this mission. The punishment mentioned in the *qanun* is seen as an effort to follow God's rule, and religious narrative is used as justification. The explanation of *Qanun* no. 11/2002, for example, states:

In the Islamic legal system there are two types of sanctions; one is *ukhrawi*, which will be accepted in the hereafter, and the second one is sanctions applied by humans through the power of executive, legislative and judicial institutions. Both types of sanctions encourage people to abide by the law. The state's role is needed within law enforcement. The law has no meaning if it is not enforced by the state. On the other hand, a country will not be orderly if the law is not enforced.

The law emphasises the sanctions in the *qanun* as part of the Islamic legal system applied through the power of the government body at the provincial level. The sanctions vary, from warnings, fines, jail to public flogging, depending on the infringement committed. Public flogging marks the distinction between Aceh, as the province which has an autonomous right to implement *shari'a* law, and the rest of Indonesia. The Aceh government claims this punishment is aimed at educating the perpetrators so they regret their sins and do *taubat nasuha* (sincere repentance). This kind of punishment is also expected to make the perpetrators ashamed of what they have done, and at the same time is given as a 'warning' to others not to make the same mistake. In this narrative, the government is practicing coercive authority, in which people are being controlled through their faith.

By using religious narrative, the government emphasised the law as their effort to implement God's order and make Islam the guidance for life. Those who are 'good'

and obey the law, indicating they are good Muslims, will be rewarded in the afterlife, and those who breach the law will be punished based on the government's interpretation of God's law. This process shows how the government exercises coercive authority where people are persuaded to follow the rules as a form of piety which will be rewarded in the afterlife. At the same time, violations against this law mean punishment, such as public flogging, which also plays its role as a warning or 'threat' towards others, as it is conducted in an open area and the public humiliation sanctions can be witnessed. Discussion on this will be elaborated further in chapter 5.

People are being forced to follow government interpretations of religious texts which are manifested through *qanun*. Such power is a "monopoly over Islamic knowledge" according to Sirelkhatim (2015), in which only certain groups of people have authority to interpret religion. He argued this kind of situation, which happens in many Arab and Islamic states, prevents people's critical thinking and leaves the government and its religious bodies or institutions as the sole interpreter of religious text. In the case of Aceh, the government's monopoly over religious knowledge and interpretation in a religious society, makes this power prone to being used only as a political populist tool. The law may only focus on certain aspects which could be used as symbols of *shari'a* to distinguish Aceh from other places. Regulations on Islamic attire for example, differ from other places in Indonesia, as Aceh is the only province known for its veiling obligations, which are always perceived as an essential part of its Islamic identity.

Government authoritative power to interpret religious text, which is then made into formal legislation that should be followed by people in the region, is getting stronger as there is no channel for people to challenge the law. Those who try to do so are often seen as deviant and need to be straightened out. As people have a strong belief in religion, the government's or politicians' claims in the name of religion are supported, especially if the authorities have some respected religious scholars or religious body behind them. Hence, religious doctrine promoted by authorities using any religious text will be accepted as the truth, regardless the topic itself may still debatable among Muslim scholars or that the texts (in the case of hadith) may not necessarily from legitimate sources.

Criticising the *qanun* could be perceived as an effort to disrupt the implementation of *shari'a* and any person doing this is regarded as an enemy of Islam, and often intimidated and threatened by some vigilante groups. Hilda, who criticised

how *shari'a* in Aceh often only focuses on regulating women's bodies, instead of some other fundamental values in Islam reported that her life had been threatened: "I got lots of insults, threats, intimidation like killing and even some people claiming to be Islamic groups were looking for me, some radical groups".

Hilda had also been called a Jewish stooge, missionary and someone who wants to vilify *shari'a*. These situations indicate how the construction of *shari'a* in the society is not only enforced by the Aceh government through its official bodies, but also by people who believe that it is their responsibility as Muslims to ensure that God's law is being carried out. They are keen to implement *shari'a* as the religious discourse in everyday life, always promoting the idea that a good Muslim must do so.

During my stay in Aceh, I heard a Friday sermon from a nearby mosque where the preacher asked people to support *shari'a* implementation and reminded people that there are others who hate Islam as well. He also said "if a Muslim is keen and persistent in implementing Islamic law, they will get some help (from God). We remember the history of the Badar war, where Muslims were the minority then won over the much bigger troops". Here the discourses of *shari'a* law enforcement were linked to the history of war during the Prophet's time as if those who disagree with this law are the enemy that must be fought against. Associating this narrative with war also further perpetuates the binary division.

Religious discourse in the society has also gone beyond just regulating people's bodies but has promoted homogeneity and exclusion towards those who are different. Diversity is not celebrated but viewed rather as something that could lead to alienation or exclusion.



Figure 4.3:
"There are 3 requirements of Muslim men and Muslim women

Not covering *aurat*:

not Islamic, crazy, pre-pubescent

So, if you see male and female Muslims not covering *aurat*, they are probably from one of those groups above.

Library of Islamic Centre, Lhokseumawe city".

This huge public billboard is situated in front of the government owned Islamic Centre library at the heart of Lhokseumawe city, Aceh. Standing in front of the iconic building and next to the main road in the downtown area makes this banner very salient. The text is problematic because it classifies the three groups as exceptions towards the veiling obligation but also excludes them from the ‘norms’. This kind of situation could lead towards discrimination or even vigilante acts, in the name of defending Islam.

Along with warnings about the veil, warnings about morality, particularly *khalwat*, are the most common displayed in public space.



Figure 4.4: The banner says,

“According to *Qanun* Aceh no. 6 year 2014 about jinayat law, it is prohibited to be paired with someone who is not a husband or wife or blood relative”.

This public notice is situated in a public space next to a reservoir, a place often visited by people to relax and enjoy the view. On the sign is the city symbol, which indicates that the banner was made by the local (city) government through the Islamic *Shari'a* Office of Lhokseumawe, as mentioned at the bottom. The words ‘prohibited’ in the text are written in red to emphasise the message and the activities that are prohibited in this area. This is a way to discipline people and police their morality at the same time. It aims to control people’s behaviour and prevent them from breaching common agreed moral values.

Warnings about *khalwat* are either made by the government or community groups in the society and as mentioned, are often placed in recreational areas, like parks, beaches and other places usually used by people to spend their free time and relax. It indicates there is a presumption that these kinds of places will be used by people to breach moral values by being together with their partner. This is contrary to the definition of *khalwat* as stated in *Qanun Jinayat* no. 6/2014, in which this crime is defined as an act by two unmarried people of different sexes in a closed or hidden

place that could lead to *zina*. Parks, beaches and other public recreational areas are open and public places which people can easily access, and can see and witness anything that happens there. Hence, in practice there is a shifting between the regulations mentioned in the *qanun* and the reality which subjects people to further intimidation. In fact, public space like this is often being used by unmarried couples, who could be accused of committing *khalwat*. On every New Year's Eve, for example, the WH conduct a public raid in recreational areas in many places in Aceh including the beach and reservoir area (Detik News, 31.12.2012; Serambi Indonesia, 01.01.2017a).

4.3. *Shari'a* in Practice

People's active voluntary participation is central to the implementation of *shari'a* in Aceh. As explained in the previous chapter, Islam has long been rooted as part of Acehnese identity. Hence, the use of religious discourse in modern day Aceh attracts people who are proud of their past history and Islamic identity.

Prior to the first *qanun*, *Qanun* no. 11/2002, being passed, in 1999, some vigilante groups had already conducted veil raids on the road on women who did not cover their head (see chapter 1). This regulation of people's public appearance, which in practice focuses mostly on women's bodies, has continued and after more than fifteen years, people are used to veiling. They are not used to seeing unveiled women, hence those coming, regardless of their religion would feel uncomfortable. They are very conspicuous and attract attention that makes them feels uncomfortable.

I went to a pharmacy with Tina, and none of us were wearing any veil. I decided not to bring a scarf because I was wearing a hoody jacket. At the pharmacy, I was aware of some people staring at me as I was not veiled, while Tina told me she would wait at the parking. After I finished, I met Tina at the parking and she told me she did not feel comfortable because she also felt the same as me, that people were staring at us because we were not wearing a veil. That is why she decided to wait for me at the parking outside. The way people were staring at us felt like a social punishment because we do not follow what local law asked.

(Field notes, 25 September 2016)

Some local women I met in Aceh told me many of their friends who are not Muslim had decided to veil as they did not feel comfortable when not wearing one. Alia said:

Many friends of mine who are Catholic or Buddhist they wear veils because they feel they have to, even just use a scarf. The reason is they do not want to look strikingly different, so they wear a veil and in a formal event they even wear a proper veil like Acehnese. So, I wonder, what is the point of it all? Why do we only play at the symbolic level, formality level.

Women who do not veil or who wear tight clothes, seen as a more common problem nowadays, are seen as breaching the law and deserve to be punished. In this case, they would receive social punishment, such as people staring at them, which is now a new norm, a practice that never happened in Aceh before the formalisation of *shari'a*. In addition, as the *qanun* is interpreted as an effort to impose God's law, regulations that claim to be based on religious text, an act of following it would be seen as a sign of piety, while breaching it would mean a form of sin. Therefore, punishing a sinner is considered as an act of *amar ma'ruf nahi mungkar* (commanding the good and forbidding the evil).

It is becoming common in everyday life that people ask women to veil or cover their *aurat*. When I was in a food hall in Banda Aceh, the food seller was wearing a t-shirt asking women to veil.



Figure 4.5: A man wearing a t-shirt saying:

“Cover your *aurat* (body)

ukhti (Arabic: sister) ...

help us to protect our gaze”.

In addition to the text, the t-shirt also showed a picture of woman in a veil, which indicates that *aurat* here refers to wearing a veil. The text was clearly produced based on a patriarchal standpoint as the next phrases said, “help us (males) to protect our gaze”. Here, the text clearly give the order towards women in order to help men

do their part of protecting their gaze, instead of asking men to be responsible for lowering their gaze. The words used are emphasising and regulating women's appearance, instead of reminding men to change their attitude and behaviour. Like regulations about the partial curfew towards women, which claimed to protect them from harassment, women are constructed as the cause of the problem and have to be regulated in order to avoid any problem in the society.

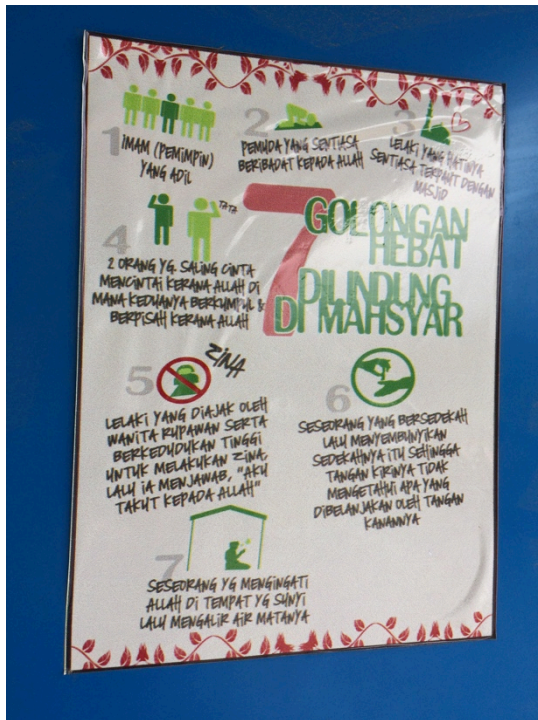


Figure 4.6:
A poster in a public space (bus stop):

“7 great groups will be protected in *Mahsyar* (the after life):

1. Just leaders
2. The *pemuda* (young males) who always pray to God
3. A man whose heart is always connected to the mosque
4. People who are in love because of God, then they are together and separated because of God
5. A man who was invited to commit adultery by a beautiful and high-up woman, but responded by saying, ‘I am afraid of God’
6. Someone who give alms then hides his/her actions so the left hand does not know what the right hand did
7. Someone who remember God in a quiet place then her/his tears run down”.

This poster displays patriarchal values and highlights how women and men are perceived in the society. Points 2 and 3 refer only to males, and the only picture that uses a woman as a symbol is in a crossed circle; it demonstrates how women are perceived as seducers; and a man who can resist will be in a group of great people in the afterlife. A similar perception of women can also be seen on a banner in Sabang, Aceh, a tourism resort on Weh Island.



Figure 4.7:

“Exclamations!!!

In connection with the more frequent disasters (catastrophes) in our country, especially Aceh, we hereby appeal to all visitors and the community of Sabang city to stay away from actions that smell immoral, such as:

1. Being together with no marriage bond
2. Impolite dressing
3. Celebrating the new year of Christ which does not fit with Islamic values
4. etc.

Thus, this appeal to be understood

Signed

MPS (Society Concerned for Syariah in Kota Sabang)

Note: If you do not follow this advice, the risk is yours”.

In this banner, the word “Exclamations” is written in red with three exclamation marks, which aims to warn people. The banner associates the disasters with immoral behaviour. The background of this banner shows people celebrating the new year, and warns people not to. The banner is made by a group which calls itself the Society Concerned for *Shari’a* in Sabang City. At the bottom corner of the banner they also give a warning to people if they do not follow the advice mentioned, the risk will be their own responsibility. This sentence emphasises the threat to those who dare to ignore the warning. The symbol on the left, (note the short skirt), warns unmarried couples not to be together, and on the right, (note the short skirts and ‘provocative’ poses) warns that dress regulations are aimed at women only. According to a report from the National Commission on Violence against Women, in many sexual harassment cases in 2017 and 2018, a victim blaming culture exists in Indonesia. Women are often seen as the ones responsible for sexual harassment or assault

(Komnas Perempuan, 2018, Komnas Perempuan, 2017). There is a sense that women victims of violence should take the blame, for being the ‘seducer’ or not having good morality, hence deserving the assault (Komnas Perempuan, 2017). Here, the gender stereotype is being shaped and re-shaped over time through various forms. The banner above, for instance, perpetuates unequal power relations in which women are often perceived as the seducer. Women are often blamed for wearing so-called ‘provocative outfits’ in order to justify men’s immoral attitude and behaviour. As a local woman told me in Aceh:

Rahimah : So, there is a saying, Men’s biggest temptation are women, the biggest temptation are wealth, power and women. Those are men’s biggest temptation, so if men are ... it’s like, women are like bones and men are like...

Me : Like what?

Rahimah : Like dogs

This is actually a common saying I have heard since I was a child, coming from people, including religious scholars. Women are seen as a temptation that could bring down men and are also to be blamed for men’s failure. This belief is rooted in patriarchal values, which position men as the centre and superior to women. Hassan (1991a) studied the belief in women’s inferiority in three religious traditions: Islam, Judaism and Christianity. She concluded there are three theological based assumptions used as arguments to support this belief. The first assumption is that at the beginning God created man as the first human being, then women were made of man’s ribs (Hassan, 1991b, Hassan, 1991a). In fact, the Quran mentions that men and women were made from a single source and does not differentiate the creation of the first parents of humankind (Hassan, 1991b, Wadud, 1999). The belief that women were created from the crooked rib came from the hadith, even though all the references which mentioned women’s creation from the man’s rib are flawed, both regarding their “formal (*isnad* or the chain of the narrators of the hadith) and material (main) aspect” (Hassan, 1991b, p.46). The second assumption Hassan proposed is regarding Man’s expulsion from the Garden of Eden. In the religious traditions, Eve is the one blamed as the tempter, deceiver and seducer of Adam to eat the forbidden fruit, although in the Quran both are claimed responsible for the disobedience (Hassan, 1991b, p.47). The last assumptions, as mentioned by Hassan, is that woman is often mentioned as having been created for man, hence her existence is only

complementary. The supporters of this claim often refer to Quran verse An-Nisa: 34. Even though many religious scholars have different arguments about these verses and their interpretation (see chapter 3), still it has often been used to claim men's superiority over women, either in the public or private space. As discussed in chapter 3, here it can be seen that the interpretation of religious text can vary, hence those with the authority for the interpretation have the power to choose a dominant discourse, particularly in a society in which religion is considered as part of people's fundamental identity.

Hassan's three fundamental assumptions regarding men's superiority over women in religious traditions could be used to explain the construction of gender in many Islamic societies, including Aceh. Men are often perceived as the main character, while women are only instrumental and portrayed as seducers of men that could bring them down. These unequal power relations have been produced and reproduced over time. As women are portrayed as seducers, therefore, they need to be more regulated, controlled, and disciplined than men so they do not 'provoke' men to commit harassment. Such an assumption about women would lead to more vigilante acts in the name of disciplining them and enforcing God's law.

The practice of warning women about their public appearance is also conducted by the society in a communal way, like banning them from some public places.



Figure 4.8:

Warning banner for women who want to enter the mosque yard:

“No entry to the mosque's yard for women wearing tight pants and tight clothes (it is not Islamic dress)”

This banner was placed in front of a mosque in the city of Lhokseumawe, Aceh. Again, like many other warnings about so-called 'Islamic attire', it warns women not even to enter the mosque yard if they are wearing a tight outfit. This banner is placed at the front side of the mosque and next to main road, so it can be seen from the road. The first phrase “*Dilarang Masuk*” (No Entry) is written in red as

a warning or to emphasise the message. The words “*ke halaman masjid*” (the mosque yard) is written in yellow, which makes it so distinct, and emphasises that it is forbidden to enter that particular space. A mosque is a public space, however, people make regulations for how women should dress to be able to enter the site. This is also interesting how “tight clothes” have an identity as un-Islamic dress, hence women in such clothes are not allowed to enter the mosque yard. In this case people want to protect the mosque, but end up limiting its interaction with people. Instead of making a mosque a place that is welcoming every human being, this banner makes it a restricted area which can only be visited by people, women in particular, with certain qualifications especially regarding their dress.

Even though the government already has its own legitimate body and the *shari’a* police, who are responsible to make sure people follow the *shari’a* regulations, vigilante groups still exist and such groups even feel they have more rights to take all necessary actions in ensuring *shari’a* is being implemented in the region. I discussed this with a participant in my research:

Ratna: In many villages, there is a group which acts like the village keeper, they consist of young people who are always controlling the village. For example, if there is a teenage girl doing ‘many things’ (referring to activities that might breach the norm), she will definitely be reprovved for that. But if we do not do anything we will be fine.

Me: What do you mean by doing ‘many things’?

Ratna: for example, if she is often going out (with a man) and she has not married yet, and they are often going out, they will be reprovved for sure.

Me: By the group of young people in the villages?

Ratna: Yes, it happens in our village.

Me: Young people you mean here, are they only men or women as well?

Ratna: No. its only men. I saw them rebuke those who are unmarried and always going out, and also if it’s at night and they are together inside the house, we do not know what they do, they will be arrested (raided).

This highlighted the male hegemonic practice of Aceh’s *shari’a* in which men consider they have the right to control people or even raid their homes if they are

considered as breaching the norm or *shari'a*. In some cases, they even force people who were caught being together or committing *khalwat* to get married.

An undergraduate thesis by Barmawi (2016) submitted to the State Islamic University Ar-Raniry mentioned some cases of forced marriage of underage couples because of being caught committing *khalwat*. Barmawi mentioned three *khalwat* cases in which two couples had been warned by young people in the village for being together on a motorbike then brought to the village assembly and forced to get married straight away. The other case was a couple caught together in the backyard of someone's house who later reported it to the village assembly, which then decided to force the couple to get married immediately.

During my stay in Aceh, I often heard people mention this kind of case as a common practice in some villages. I would argue, that the fact that *Qanun Jinayat* no.6/2014, Article 24, mentions that a *khalwat* case is the responsibility of a village customary court, has created a loophole in which the village assembly could decide by themselves regarding this case. This situation means the accused have no opportunity to defend themselves legally in front of a court. In addition, it also demonstrates how the definition of *khalwat* mentioned in the legislation has shifted and could be defined in many different ways. Religious interpretation that has been constructed by the government, as manifested in many regulations or *qanun*, in practice can be re-constructed by the local community, particularly regarding cases that control people's morality, behaviour, and sexuality.

4.4. Conclusion

This chapter has examined how men and women should behave within local *shari'a* law. People are being subjected to increasing degrees of control in many different aspects of their lives, including public appearance, religiosity, morality and behaviour, as well as mobility and sexuality. The state, in this case the local government sets the standard, through the local law, of how people should behave. It also regulates women more than men, particularly regarding their public appearance and mobility. Local *shari'a* gender ideology expects men to be heterosexual and religious, measured by not missing Friday congregation. Meanwhile for women, in addition to the expectation to be heterosexual, they also face some further control and restrictions. The law endorses a unitary standard of one standard model of femininity,

particularly regarding women's public appearance. It highlights the state control over the image of women's bodies in public and can also be seen as an attempt to impose cultural uniformity on to them. In this case, dress symbolises power relations, the state, in this case the local government, wants to impose its values and collective identity onto women's bodies. Women's bodies become a manifest to express the society's collective identity, an important signifier which marks the distinction of one society from another (see discussion in chapter 1).

The Aceh government has also formed institutions with the authority to make sure that all laws are followed accordingly, with a range of punishments for men and women who breach those rules. The laws constructed are claimed to be based on Islamic values, as recorded in the Quran and hadiths. However, the authorities ignore divergent interpretations of religious text, and monopolise religious knowledge and interpretation and claim it as Islamic law or *shari'a*. But:

Islamic law, like other laws, are the product of socio-cultural assumptions and juristic reasoning about the nature of relations between men and women. In other words, they are 'man-made' juristic constructs, shaped by the social, cultural and political conditions within which Islam's sacred texts are understood and turned into law. (Mir-Hosseini and Hamzić (2010, p.23)

Hence in the case of Aceh, I would argue the law is constructed within the framework of patriarchal interpretation. It can be seen in how the very first *qanun*, since the implementation of *shari'a*, focuses on people's public appearance, particularly women's dress, which is still one of the most discussed and regulated within the society. The patriarchal interpretation of religious text began from the drafting of the law, its implementation in the society, either by government or vigilante groups, who consider the enforcement of *shari'a* as part of their responsibilities as good Muslims. The patriarchal interpretation of religious text could also be linked to the time of the Quranic revelation in the seventh century when the patriarchal culture dominated in the Arabian Peninsula (Wadud, 1999). Wadud argued that within the androcentric culture in the Arabian society at that time, women's value was based on their avail for men, particularly their reproductive function. Wadud claimed the Quran 'spirit' of bringing harmony in the society, at that time was seen as accommodating those values. Many societies today take the text literally without any understanding of the contextual situation at that time. According to Wadud (1999) many religious scholars of the 20th century are against this literal interpretation and

application of some religious texts. Religious texts need to be understood within the framework of their context and any rationale following the revelation at that time (Wadud, 1999, p.81). So, such a literal interpretation of some religious texts reproduces the patriarchal culture that was rooted in the seventh century Arabian Peninsula. Here, I would like to quote Mernissi from her work *The Veil and the Male elite: A feminist Interpretation of Women's Right in Islam*: "If women's rights are a problem for some modern Muslim men, it is neither because of the Quran nor the prophet, nor the Islamic tradition, but simply because those rights conflict with the interest of a male elite" (Mernissi, 1991, p.ix).

In Aceh in particular, the use of religious discourse in many aspects of everyday life has shaped people's belief about their religion. However, domination over religious knowledge, in which religious interpretation is being monopolised by the government or its religious body has created a society which only follows the orders or regulations constructed. This has created a homogenised society, in which people are expected to follow certain norms, while diversity is not celebrated and is being eliminated from the society. Those who do not follow the law or criticise the practice of *shari'a* and *qanun*, experience exclusion or even intimidation.

To conclude, here the government exercises the politics of sameness through its power and authority. Through this, people are homogenised and diversities that already exist in the society are ignored. People with different beliefs are forced to negotiate with the majority's faith. It has created unequal power relations between the government and the society and also the majority and minority groups that exist. The focus of *shari'a* practice in Aceh is more about regulating people to create what Foucault called "docile bodies", regulated and controlled by certain norms set by the government. The government's active campaign using religious discourse to engage the society in implementing the rules that have been set, make people only focus on aspects that have been regulated. People become less critical towards the *shari'a* legislation which mainly focuses on controlling the human body, particularly the woman's body, instead of other aspects which are more related to the society's welfare, such as creating an accountable government administration, eliminating poverty and fighting corruption, which are still the main problems in Indonesia. In addition, laws that control the body distinguish the province from the rest of Indonesia, as veiling and other regulations which use Arabic terms make it seem more religious.

Chapter 5. Corporal Punishment and Public Caning Ceremony

It was Monday morning, 28 November 2016. Unlike any other day, this morning many people gathered around the *Ar-Rahman* mosque at Cinta Kasih area in *Gampong* Panteriek, Lueng Bata, Banda Aceh. This area, is also known as *komplek Budha tzu chi*, as the residential houses in this area were built by the Buddhist Compassion Relief Tzu Chi Foundation Indonesia after the tsunami disaster in 2004. A stage was built in the middle of the mosque yard, people were already standing outside the gate to watch the public punishment event, while government officers from some *shari'a* institutions were getting everything ready for the ceremony.

The mosque yard is the most common place to hold public caning ceremonies in Aceh. This symbolises that the activities held are associated with religious values that make it seen as a sacred ceremony. The ceremony itself is usually held either before or afternoon prayer time, *Dhuhur*. Mosque or *masjid* in Arabic, means place of prostration (Kersten, n.d), it is a symbolic building and a sacred space at the same time. It is also often called a house of God and, obviously, it is a place for Muslims to hold congregational prayer. In many societies, including Aceh, the mosque is not only a place for communal praying, but it is also for other socio-cultural activities, including religious education and community meetings. Conducting a public caning ceremony in the mosque area emphasises the religious connection between the audience who witness the ceremony, which is seen as a 'religious activity', and their identities as Muslims.

This morning, men, women and children were coming from nearby area or even from other *gampong* or villages. People wore everyday clothes. Men were wearing jeans, trousers, casual shirts or t-shirts, some were even in shorts. Meanwhile, most women who came were wearing the common style of veil worn in Indonesia today, trousers or skirts, and long sleeved tops, but there were also some who just wore short sleeved top and no veil. If there had been a dress raid, many people would have been subjected to the discipline charge (see chapter 4). Even though there were many *shari'a* police officers around today, they seemed busy and focused on the preparation for the event, as did other government officials and regular police officers. Children wearing their school uniform also filled the area even though it was still during school time, and they seemed not to bother about the announcement which warned attendees that the event was only for people aged eighteen and over.

There were many journalists as well waiting to cover the event, at the same time many civilians who came to the area also looked enthusiastic to record the event using their mobile devices. Some attendees discussed those who were to be punished that day. Some people told me one of the women convicted would not be punished as she was pregnant. An attendee who was also a resident in the area told me this morning there was announcement that the public caning ceremony would be held today. Modern technology helped the news spread quickly, which made people from other villages come to this area, including myself. I had received a text from a local friend who had been informed by her friend that a public caning ceremony was to be held.

This is one out of many public caning ceremonies held in Aceh since first implemented in 2005. In 2016, according to a report by the Community Legal Aid Institute there were 332 people punished by public caning and 66 others threatened with this punishment (Lembaga Bantuan Hukum Masyarakat, 2017). The report based on media publications regarding public caning ceremonies in Aceh also mentioned that the other 66 people would eventually be very likely to be punished as well.

This chapter aims to answer the research question about punishment conducted on those who do not follow the local codification of *shari'a*. My aim here is not only to highlight the process of public punishment in Aceh under local *shari'a* regulations but also to critically discuss the practice. I will also discuss the transformation of judicial system practice that affect Islamic law in Indonesia.

This chapter will first give an overview of corporal punishment, its definition and the role of religion in this practice. The next section will highlight the legacy of colonialism in the Indonesian judicial system and how it affected the implementation of Islamic law today. I draw upon Foucault's *Discipline and Punish* in the European context and how modernity in its judicial system transforms the practice of torture to a non-corporal penalty. Then I take the concept of modernity of the judicial system into the post-colonial context of Indonesia. In this chapter, I argue that Dutch colonialism changed the character and practice of the judicial system in Indonesia, including Islamic law. This change transformed the law into a new form which is different from the practice in the pre-colonial era, and I would argue this new formation and character persists in the practice of modern Islamic law in Indonesia. The discussion then follows by highlighting the legal basis of public caning within the implementation of *shari'a* law in Aceh. In this section I will also elaborate a

discussion about *malu* or shame as the aim of the punishment mentioned in the *qanun*. *Malu* is an emotion, however it is exploited by the legal system as punishment. The last section will narrate the implementation of the public caning ceremony, which was held in November 2016. In this section I emphasise that the punishment works in two different ways: physically, by torturing the body, and psychologically, by shaming the offenders in the public space. In addition, I argue the practice of this punishment reproduces male hegemony and perpetuates gender hierarchy in ways which link with the effects of the new regulations concerning everyday behaviour and appearance which I analysed in chapter four.

5.1 Corporal Punishment: An Overview

Corporal punishment is one of the oldest forms of punishment in human civilisation, and happens in the domestic space and in public areas such as the case of caning ceremony in Aceh. According to Pate and Gould (2012) corporal punishment as a form of penalty endorsed by the state could be tracked as early as 2000 BC. It is a product of many civilisations, and associated with the history of slavery to religious tradition, for example.

According to Durrant and Poppelwell (2017) religion plays a significant role in the construction of the legal system in many societies. Religion is often concerned with people's morality and behaviour and setting so-called 'right way to behave' which becomes the standard norms and at the same time it also regulates punishment for breaching the norms (Durrant and Poppelwell, 2017, p.128). According to Sadique (2016, p.48) the concept of *lex talionis* or retributive punishment is mentioned in the Bible, in Exodus 21: 23–36 and reasserted in Leviticus 24: 20 "fracture for fracture, eye for eye, tooth for tooth; whatever injury he has given a person shall be given to him" (King James Version). She further mentioned a similar account in the Quran sura Al-Maida:

We ordained therein for them: 'Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal'. But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah [God] hath revealed, they are (no better than) wrong-doers. (5: 45, Yusuf Ali Translation). (Sadique, 2016, p.49)

However, Sadique emphasised even though the two religious texts mentioned forms of punishment, it also suggested that forgiving is the better option and if punishment is

chosen it should be to uphold justice. In 2005, Tariq Ramadan called for a moratorium on corporal punishment, stoning and the death penalty in the Muslim world. He argued repressive measures and punishment would not make a society's fidelity to Islamic teaching increase, hence he urged Muslim society to demand social justice instead (Ramadan, 2005). Despite many critics, from scholars and the international community, the practice of corporal punishment using religious justification still widely exists in many countries.

So, how we define corporal punishment? According to the UN Committee on the Rights of the Child, corporal punishment is "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light".¹¹ Similar to this, Pate and Gould (2012, p:xvi) described it as the imposition of physical punishment or ordeal to make the recipients obey the rules or norms. It comprises many forms such as whipping, birching, caning and spanking. In this thesis, the forms of corporal punishment discussed will be whipping, flogging and caning.

In 1955, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted Standard Minimum Rules for the Treatment of Prisoners.¹² Point 31 mentioned that corporal punishment that is cruel, inhuman and degrading should be prohibited. In 2015, the United Nations revised what are now known as Nelson Mandela Rules,¹³ to emphasise what it refers to as "humanisation of criminal justice and the protection of human rights". Rule 1 states that no prisoners should be subjected to any cruel, inhuman and degrading treatment. Additionally, in Rule 43 the prohibition of corporal punishment was clearly expressed.

Despite many criticisms and efforts from the international community to eliminate the practice of corporal punishment, it is still a part of the legal systems in many places in the world.

¹¹ UN Committee on the Rights of the Child (CRC), *General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, available at: <http://www.refworld.org/docid/460bc7772.html>

¹² Standard Minimum Rules for the Treatment of Prisoners: Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

¹³ Resolution adopted by the General Assembly on 17 December 2015: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), available at: <https://undocs.org/A/RES/70/175>

5.2 Colonialism and Judicial System Transformation in Indonesia

At the beginning of the nineteenth century, then, the great spectacle of physical punishment disappeared; the tortured body was avoided; the theatrical representation of pain was excluded from punishment. The age of sobriety in punishment had begun. (Foucault, 1995, p.14)

The quote is taken from Michel Foucault's works *Discipline and Punish* in which he highlighted some forms of torture used as punishment methods in the past. Foucault begins his book by explicitly describing a public torture that was held in 1757 in Paris. According to Foucault (1995, p.11) the spectacle of public torture as punishment started to disappear a few decades later and was replaced by 'modern' penalties which no longer touched the body or did so as little as possible. However, Foucault's work is based on the historical practice in European countries, particularly France and England. Albeit the number might not be as high as in earlier centuries, the practice of public torture as punishment remains, particularly in some former, mainly, British colonies. Singapore, Brunei Darussalam and Malaysia, for example, still implement corporal punishment inherited from the British who installed British Common Law and Indian Penal Law during its domination in the region (see Yao, 2007, Amnesty International, 2010). In Indonesia, the Dutch administration introduced the *Wetboek van strafrecht voor Nederlands Indie* (WvSNI), or the Criminal Code for Indonesian Citizens, in 1918, which kept the death penalty as a form of punishment to be implemented in the colony, even though it had been abolished in the Netherlands in 1870; Van den Haag (1986, p.1662) called this the harshest kind of corporal punishment.

According to the Institute for Criminal Justice Reform (2017) the Dutch decision to maintain the death penalty in the WvSNI was based on racial prejudice that the indigenous people could not be trusted, and often gave false statements in front of the court. Therefore, the colony which was often considered as a 'less civilised' society still needed to be regulated, controlled and disciplined through the threat of capital punishment to make them civilised and docile to the coloniser administration. This legacy remains until today, the KUHP inherited from Dutch law still maintains the death penalty for extraordinary crimes (Wijaya, 2016).

Thus, when Foucault (1995) argued that by the beginning of 19th century the body was no longer the target of penal repression and physical punishment in Europe,

it actually still persisted in many European colonies. In the Dutch East Indies, for example, even though the Dutch has abolished torture from their statutory law in 1798, followed by the abolition of flogging and branding in 1854, the practice remained in the colony at least until 1862. During the period of the *Cultuur Stelsel* (Cultivation System) from 1830 to 1870, corporal punishment was used to ensure the agricultural production targets were achieved. This punishment applied to village chiefs who then meted out the punishment to farmers (ban Klaberen, 1983). The type of punishment varied from people being tied to a tree in the full sun all day, put in a pond for a night or being lashed with a cane (ban Klaberen, 1983, p.121). Like the British, the Dutch also implemented flogging or caning with rattan known as *rottingslagen*. According to Cribb (2010) a thin strip of rattan (sometimes split, soaked in water or hardened in fire to create a more painful effect) was used to whip to the victim's buttock. In 1844, The Dutch administration regulated that the amount of flogging in a single punishment to a maximum of 40 hits, the number was reduced to 20 in 1848 along with excluding women from this punishment (Cribb, 2010, p.59). As mentioned above, the practice finally came to an end in August 1862 or about eight years after its been banned in the Netherlands. However, in 1862 alone, the record of rattan blows reached 474,375, most of which were conducted in Java (Cribb, 2010). The practice of corporal punishment here indicates that it took longer to eliminate physical punishment in the colony. Some type of punishment, such as the death penalty, were even preserved until the end of colonial domination and still remain until today.

One element of modernisation of the judicial system in the European context was marked with the transformation of punishment from physical torture or corporal punishment to the non-corporal nature of penalty, such as imprisonment. Gutting (2005, p.80) summarised Foucault's four major transitions of punishment from pre-modern to modern:

- 1) Punishment no longer a spectacle for the society
- 2) The criminal is the main target of punishment instead of the crime
- 3) The judicial sentences lie in the hand of 'experts' (psychiatrist, social workers), not the judge in conformity with the law
- 4) Retribution is not the main purpose of punishment but rather to reform and rehabilitate the criminal

In this chapter I will investigate whether these four major transitions also applied in the post-colonial context.

Before continuing to discuss the context of modernity of judicial system in Europe and its effect on the European colonies, here I would like to highlight my interest in applying Foucault's works to colonialisation, particularly in Indonesia. My interest derives from some scholars' criticism of Foucault's focus on the European context only. Spivak in her work "Can the Subaltern Speak?" referred to it as "sanctioned ignorance" of the Western intellectual (Spivak, 1988b). She wrote:

Foucault is a brilliant thinker of power-in-spacing, but the awareness of the topographical reinscription of imperialism does not inform his presuppositions. He is taken in by the restricted version of the West produced by that reinscription and thus helps to consolidate its effects. (Spivak, 1988b, p.290).

Similar criticism came from Hallaq (2018) who argued that Foucault's focus on the European context makes it hard to understand the uniqueness, exceptionality or genealogy of some phenomena. According to Hallaq, no phenomenon can be appreciated if we only know one perspective or situation. Timothy Mitchell criticises Foucault, whose work makes France and Northern Europe taken for granted as the location of modernity. He argued that Bentham's panopticon, which is discussed in *Discipline and Punish*, and which incorporated self-monitoring was originally a design of Jeremy Bentham's brother Samuel when helping Russia's colonisation of the Ottoman territory; and the practice of monitoring at school was invented in Bengal in the 19th century (Mitchell, 2000, p.3). All this criticism encouraged me to apply Foucault's work to the colonial context and examine how modernity in the judicial system in Europe affected the European colonies.

I would argue, Foucault's ignorance of the non-European context could lead to universalisation of one phenomenon as history of the world, a concern which was raised by Hallaq as well in his book *Restating Orientalism: A Critique of Modern Knowledge*. My concern occurred when I read *Discipline and Punish* in which Foucault explained the transformation of punishment in Paris and other European countries (as mentioned earlier in this chapter) from public display to a carceral system. It was the practice of the public caning ceremony I witnessed in 2016 during my fieldwork that led me to question the changes that Foucault described in his work, as I came to a new proposition that it seems that both public spectacle punishment and surveillance are supporting each other in my fieldwork region, rather than replacing

one with another as happened in the European context. Therefore, we need to revisit Foucault's work in the Non-European context, in this case Aceh. We also need to investigate how the transformation of the judicial system and punishment from the pre-modern to modern era in the European empire, particularly the Netherlands, affected the practice in its former colony, Indonesia.

Modernisation is usually associated with Westernisation (see Gray, 2007) and in the case of European colonialisation, modernisation is often associated with its 'civilising' influence. This includes the insertion of the colonialist (European) legal system into the colonies (see Hallaq, 2009b, Hallaq, 2009a). In the post-colonial context, modernisation could also be interpreted as transformation of local law, which was often fluid in practice and existed in the oral tradition, into written form which gave it a fixed position as law. The transformation of local law was claimed as necessary by scholars like Vandebosch (1943) who argued the uncertainty of local law created confusion, hence the need to adopt Western law in order to cope with modern development. For the European empire, the modernisation of judicial system brought an effective policing and control over their colonies. Like many Orientalists, Vandebosch saw the coloniser as the more civilised, the one who brought many developments and a civilising influence to the indigenous natives of the Dutch East Indies.

The European territories consisted of about 35% of the world land surface as in 1800 and expanded to 84% by 1914. Their legacy to their colonies is hard to quantify (Headrick, 1981). According to Hallaq (2009b, p.358-359) even though the main motive of European colonialism in the 19th century was economic, in order to maintain power and domination, the political and cultural domain had to be controlled, and this was entwined with the legal system. The colonisers translated the colonies' indigenous law into their language, such as English or Dutch, which resulted in an homogenised interpretation of the law which had previously been diverse by its nature due to various local ethnicities and beliefs. They also established judicial administration that was chaired by the colonial administrator and local religious scholars, as advisers (see Hallaq, 2009b, Hallaq, 2009a, Otto, 2010).

At the beginning of its occupation in Indonesia in 1619, the Dutch via its corporation *Vereenigde Oostindische Compagnie* (VOC) or known as the Dutch East India Company primarily focused on economic benefit and were not really involved in the native customary legal system. However, as argued by Hallaq (2018) this lack of

interest was not derived from the idea of respecting the natives' culture and tradition, rather it was just not the time yet. He argued in the 19th century, following the growth in intellectual-scientific field as well as military technology, the coloniser's interest expanded beyond just economic exploitation. The development in military weapon technology became the backbone of Dutch expansion in the Dutch East Indies, which was also followed by the involvement of Orientalists to preserve law and order, as will be discussed later in this section.

As the VOC's main priorities were business and profit, hence their early focus was mainly to conduct any measure that could affect the business directly. Therefore, even though the Dutch lacked any interest in local laws at the beginning of their domination, when it came to their business and economic goals their rules applied, including implementing punishment, that had been abolished in the Netherlands, particularly to the native slaves or those who worked in their enterprises and territory. At the beginning, the VOC introduced the Dutch model of legal system in the coastal area where they operated (Hallaq, 2009b). This meant the company recognised judicial torture and corporal punishment applied to company employees, Europeans, Chinese residents and local people who were mostly slaves who lived in the city of Batavia (presently Jakarta) on Java. (Ward, n.d, Cribb, 2010). The slaves were from Eastern Islands like Bali, Lombok and Celebes, while the Javanese were not allowed to live in the city as the Dutch feared they would organise rebellious acts from within (Oostindie and Paasman, 1998). Hence, even though the Dutch did not really intervene in the legal system in the Dutch East Indies during the early time of their domination, their rules were applied to those who worked in their enterprises, including natives Indonesians.

In 1811, the British took control of domination over Indonesia following the Napoleonic wars. As Otto (2010, p.437) highlighted, Thomas Stamford Raffles was appointed as governor and introduced some legal reform particularly regarding land. Raffles declared that all land was state property, policies which were adopted by the Dutch after the British left in 1814 and transferred back the power to the Dutch (Hallaq, 2009b, Hallaq, 2009a). The VOC was no longer in charge as the corporation had gone bankrupt and its power fully transferred to the Dutch state by 1800. Raffles' reformation in terms of the legal system seemed to encourage the Dutch to get involved in the judicial system of the colony.

In the 1840s, the Dutch experienced more pressure to implement legal universalism in the colony, through the widespread application of European law (Cribb, 2010, p.55). Cribb (2010) further explained that the aforementioned fluidity and diversity of the native legal system raised some concern about the abuse of power by indigenous rulers, hence it needed more supervision by the colonial administration. Here, the Dutch tried to position themselves as the rescuers of the Indonesian judicial system from the tyranny and despotism of native rulers, similar ideological assumptions to Spivak's comment that "white men are saving brown women from brown men" (1988b, p.296). The colonisers claimed to be saving the community from their indigenous rulers and at the same time introduced their legal system which they often claimed as more 'civilised and modern' only to perpetuate their hegemony over the colony. In 1873, the Dutch administration started to introduce the European duplicate of penal codes, in which unlike their early occupation where their law was only applied to Europeans in the colony, this time the codes also applied to natives (Fasseur, 2007). The Dutch administration's effort to unify the legal system and implement law and order in the colony continued by transforming the face of the dual judicial system of Islamic law and *adat* law or customary law (see below).

As an archipelagic country with more than 300 different ethnic groups, Indonesia is a diverse country by nature including in terms of its legal system. Anderson (1965) described it as an area in the Dutch East Indies which shared the burden of the white colonial. Before the Dutch intervention in Indonesia's judicial system, the society had a dual legal system that is Islamic law and *adat* (customary) law. An example of how *adat* and Islamic law support each other can be seen from the concept of inheritance law written by Syaikh Arsyad Al-Banjari, an Islamic scholar from South Kalimantan, Indonesia, in his manuscript *Sabilal Muhtadin*, in which he considered the local culture of people in South Kalimantan regarding inheritance. In many cases based on Islamic law, it is often claimed that the share of the male is twice that of the female, however Al-Banjari argued that in the culture of South Kalimantan, males and females work together for the family, hence when either the husband or the wife died, half of the inheritance first must be given to the one who still alive then the rest can be shared based on Islamic law (Wahid, 2006, p.250-251). This highlights the harmonious relationship of Islamic law and local *adat* or customary law. However, under Dutch occupation the character and practice of the dual judicial system

changed. Dutch policies regarding legal universalism metamorphosed the pre-colonial implementation of Islamic law and customary law in the colony.

Islam was one of the biggest enemies of the Dutch from the beginning of their occupation. The dissonance of Islam and colonialism can be seen from the many acts of resistance by religious scholars, using religious narrative (see chapter 3). According to Benda (1958) even though religious mission was not the colonisers' primary intention, many Dutch who lived either in the Netherlands or Indonesia sought to eliminate Islamic influence and brought with them a missionary task in the colony. Hence, the colonisers encountered Islamic inspired resistance in many areas they tried to occupy in the archipelago. Additionally, as Benda (1958) pointed out, at the beginning of their occupation, the Dutch policies towards Islam were dominated by misconception and fear. Benda highlighted how the Dutch perceived Islam as an organised religion like Roman Catholicism with a hierarchical clergy under the Turkish Caliph. This misconception led to the Dutch decision in 1882 to formalise and regulate the Islamic legal system by establishing *Priesterraden* ('priest council'), some defined it as a religious council or Islamic court, where its members were appointed by the colonial administrator instead of local native ruler (Benda, 1958, p.338). All the local institutions established were also still subordinated to the colonial administration (Noer, 1978, Otto, 2010, Benda, 1958). In addition, the Islamic court only dealt with family law such as marriage, inheritance and *waqf* (religious endowment) and any decisions made still needed approval from the civil court chaired by the colonial administrator (Noer, 1978). Furthermore, in 1927, following the Dutch decision to make the customary law normative, the Islamic court jurisdiction was narrowed down by transferring inheritance and *waqf* disputes to civil courts (Noer, 1978, p.43). This highlights how the practice of local law was changed by the colonisers during their domination. Additionally, I would argue the Dutch policy of establishing some Islamic institutions was an effort to pretend that they were accommodative towards local values. However, at the same time, this policy aimed to reduce the scope of Islamic law and ensure that Islam could be controlled under their institutional bodies.

According to Buskens and Dupret (2014) the very first translation of an Islamic related manuscript from the Dutch East Indies was started in 1844 by the publication of *An Introduction to Islamic Law* by Albert Meursinge which is an adaptation of *Cermin Segala Mereka yang Menuntut Ilmu Fiqh pada Memudahkan*

Syari'at Allah (Mirror for those who seek the knowledge of *Fiqh* to easily understand Allah's Law), a manuscript written in Malay by Syiah Kuala, an Islamic scholar from Aceh (Amiruddin, 1994). Meursinge's work was then followed by Solomo Keyzer's about Islamic law in Indonesia which he claimed was sourced from the books of *fiqh*, the normative text of Muslim scholars (Buskens and Dupret, 2014, p.34). Meanwhile, Christian Snouck Hurgronje (1906b) in his work on the Acehnese described how the theory of Islamic teaching and practice in everyday life are often different, the practice is often much more fluid. He emphasised that the practice is often shaped by the ethnological characteristic, political and social development in the society. Here, he recognised that Islam and *adat* (customs) are elements that are intertwined and related to each other. Amongst all scholars, Hurgronje, a Professor in Islamic studies as well as Dutch colonial officer was the one that mainly shaped the Dutch policy regarding Islamic law.

In 1893, Hurgronje was assigned to Aceh to give advice to the colonial administration about how to solve the Aceh war, which (as mentioned in a previous chapter) was the most costly war in Dutch history. In Indonesia at school, when learning about this part of history we were told that Hurgronje was a deceiver who pretended to be an *ulama* (Islamic scholar) named Abdul Ghafar in order to find a way of colonialisng us. According to van Koningsveld (2016) Hurgronje's conversion to Islam was a conversion of convenience performed to gain special interest. Hurgronje's work later on became the major influence for Dutch Islamic policies and its related institutions in Indonesia. Hurgronje advised the colonial administration to release Indonesian Muslims, particularly Mecca Pilgrims, who had considered leading rebellious acts. This decision later brought acceptance and loyalty from many religious scholars towards the Dutch administration who also then became the colonials' allies (Benda, 1958). Hurgronje also recognised the existence of the dual judicial system in the colony with its fluidity and diversity in practice. In his work, based on a fieldwork in Aceh, Hurgronje (1906a, p.14) described how the majority of people's daily lives were regulated by *adat* or customary law rather than Islamic law, and that they should go for customary law whenever the Islamic law was silent. Like customary law in Indonesia, pluralism is also the very nature of Islamic law. Pluralism in the context of Islamic law can be seen from the diversity of schools of jurisprudence; in Sunni Islam only there are at least four major schools: Shafiii,

Hanafi, Hanbali and Maliki. Hence an effort to transform the law into a fixed legal standard would only change its very fundamental character and practice.

However, like many other Orientalists, Hurgronje also perceived the people of the Dutch East Indies as less civilised and in need of modernity (Hurgronje, 1906a, Hurgronje, 1906b), based on the Dutch model to achieve political integration between Indonesia and the Netherlands (Jung, 2010, p.292). Modernising Indonesia meant to westernise Indonesia, not to be ruled by Islamic law or *Adat* (Benda, 1958). In 1901, the Dutch implemented the so-called Ethical Policy which aimed to bring Indonesians closer to Dutch culture to encourage their loyalty and common values (Benda, 1958) (see chapter 2). This policy shared the same belief with Hurgronje who saw Western civilisation as superior. Arguably, it helped the Dutch to integrate its values and ‘modernise’ the colony, and at the same time distance the society from its own values.

Meanwhile, regarding customary law following the British imperial strategy in India in which local law was translated into English to make it accessible for the colonisers, the Dutch used Cornelius van Vollenhoven’s work regarding customary law in Indonesia which was written in Dutch. In many societies in Indonesia, customary law existed only in oral form. “Orality required communal participation in, and understanding of, customary law” (Hallaq, 2009a, p.90). Hence customary law is fluid in practice as it requires local community engagement, and there are no elites, hierarchy or bureaucracy with more power over the law. This fluidity and orality made it hard for the colonial government to understand the community and to implement law and order.

The translation of customary law into the coloniser’s language also meant the law was written based on their interpretation and assumptions, which was later transformed into the colonial policy (Hallaq, 2009a). Translating law which existed in an oral tradition and highly relied on the local communities’ participation, was already problematic as it transformed the fluidity of the law into a fixed form of rules which might no longer need the community’s involvement. This meant that the operation of the law also changed, following the documentation of the oral tradition into written code. Unlike Hurgronje, whose work was based on long ethnographic fieldwork in Indonesia, most of van Vollenhoven’s work was done behind his desk in Leiden as he only visited Indonesia twice in his life, in 1907 and 1932, after he published his notable work *Het Adatrecht Van Nederlandsch-Indie* in 1931 (Benda-Beckmann and Benda-Beckmann, 2011). This means the customary law which had existed and been

preserved in the society via oral traditions was translated and interpreted into written text indirectly and from a long distance. In addition, the customary law varied from one society to another in the Indonesian archipelago which not only differed in ethnicity but also languages; van Vollenhoven translated customary laws from only 19 geographical areas in Indonesia, while the archipelago consists of over 17,000 islands with over 300 different ethnic groups and over 500 local languages. Regardless, still his work was later used as a reference for legal policies to be implemented throughout the Dutch East Indies (Van Vollenhoven et al., 1981). Hence the Dutch simplified and homogenised the society when it applied the policy to the whole region. The writing of indigenous customary law into written text by the Dutch scholar meant that customary law was recreated and at the same time this emphasised the Western or European hegemony of knowledge.

In 1927, following van Vollenhoven and other Orientalist scholarly works, the Dutch declared customary law instead of *shari'a*, as the normative law (Hallaq, 2009b, Hallaq, 2009a). This policy neglected the role of the two types of law which supported each other during the pre-colonial era. Even though Vollenhoven admitted the pluralism of *adat* or customary law in the Dutch East Indies, at the same time he disregarded the role of Islamic law. His preference for *adat* over Islamic law can be seen from his book. In *Van Vollenhoven on Indonesian Adat Law*, which is the English translation of his book, he admitted that Islamic law applied in the society, however he emphasised it was mainly used in “administration [of] religious justice, religious levies, parts of family law, inheritance and pious foundations; and even in these cases it applies by no means fully or universally” (Van Vollenhoven et al., 1981, p.11). Arguably, van Vollenhoven contributed to Dutch policies of reducing the application of Islamic law in the Dutch East Indies. As mentioned earlier in this chapter, after the Dutch declared *adat* law as normative, inheritance and *waqf* (religious endowment) disputes were transferred to civil courts which further narrowed the jurisdiction of the Islamic court; he also argued that religious law came secondary to *adat*. Thus, the writing and translation of native customary law into Dutch helped the colonials to preserve law and order in Indonesia. As Lev (1985) said, the colonial customary law policy helped them to police, control or even to make Indonesian communities docile. For the coloniser, the written law also gave them fixed standard rules which were also accessible for the colonial officers.

Hurgronje and van Vollenhoven's works did not only contribute as the major influences for the Dutch policy in Indonesia, but their works have also been used as key textbooks for Orientalists and scholars who want to study about the Dutch East Indies. Many Dutch Orientalists became experts in classical Shafii text, which is the major Islamic school of jurisprudence in Indonesia; British orientalists became experts in the Hanafi school which is dominant in South Asia; and the French and Italians concentrated on the Maliki manuscript which is the main school in the Maghreb region (Buskens and Dupret, 2014, p.36). Hence, this process did not only help the colonisers to maintain their power, law and order in the colonies, it also preserved the European hegemony of knowledge, or to borrow from Mutaqin (2012), it was "the West that invented and created the image of the East" which in this case refers to the Dutch over Indonesia.

The legacy of the Dutch legal system persists until today in Indonesia. The KUHP still has the death penalty which was mentioned in the WvSNI introduced by the Dutch in 1918. More than that, the pluralism and fluidity of the previous practice were not in line with the European legal system that required certainty as well as universalism. Colonialism transformed the character of the judicial system in the colony, where customary law was re-created into a new form and Islamic law was marginalised, although still kept for some limited aspect. Echoing the Dutch system, the judicial system in the colony was converted into a homogenised fixed written standard (Hallaq, 2009a, p.91).

After colonialism ended, the urge to implement Islamic law arose with the growth of some groups such as Darul Islam in some regions including Central Java, South Sulawesi and Aceh (see chapter 1). Almost six decades after Indonesia declared independence from Dutch colonialism, Islamic law has been restored particularly in Aceh which officially declared it in 2002. However, the practice of Islamic law in Aceh today or in other words 'the codification of *shari'a*' maintains some core characteristics of the judicial system introduced by the Dutch colonial administration, the unified legal standard that homogenises religious textual interpretation. Thus, in today's practice, Islamic law has transformed into a fixed legal standard with a definitive interpretation of religious text. As Azra (2004, p.150) put it "Islam itself began to be redefined in European (Dutch and English) terms". The pluralism of religious interpretation which was one core character of Islamic law in the pre-modern era (see Hallaq, 2009b, Hallaq, 2009a), has been converted into a homogenised

interpretation which is supported by state coercion to be implemented in the society. Diversity is no longer maintained but eliminated and the state, through its judicial institutions, has the authority to enforce the law (see chapter 4 for *shari'a* institutions in Aceh). The judicial system transformation gave the coloniser (or the state, in the post-colonial era) with all its supportive institutional authority, the ability to construct the legal standard and enforce implementation.

I would argue the implementation of Islamic law in Aceh today is following this pattern which was inherited from the Dutch legal system. During the colonial era, the relationship between Islam and colonialism was never harmonious, as religious narrative was often used to fight against the Dutch, described as the 'infidel'. However, even after the Dutch left, its legacy of the fixed legal standard as a core feature of the judicial system remained, including within the application of Islamic law. The government, through its various institutions, monopolises the interpretation of religious texts within the legal system, monitors the implementation and conducts punishment for those who breach the law. Islamic law which was fluid in practice and pluralist in interpretation, in the case of Aceh was transformed into a codified law particularly since 2002 when *Qanun* No.11 (2002) was passed. Like the Dutch policy of transforming *adat* law from the oral tradition into a written form, which obliterated its fluidity, the Aceh government policy to standardise Islamic law into *qanun* has eliminated the pluralism of religious text interpretation. This demonstrates how religion is politicised to serve certain interests in order to gain and maintain power. The codification of Islamic law in Aceh has also brought about the practice of corporal punishment, particularly caning which will be elaborated further in the next section.

5.3 Corporal Punishment in Aceh's Islamic Law (Punishing the Sinners)

Public caning is the only form of corporal punishment in Aceh under *shari'a* law. Some other countries implement different forms of corporal punishment, from caning, mutilation, to stoning to death. Public caning as a punishment in Aceh first appeared in *Qanun* no.11/2002 about religious affairs, worship and religious symbols, and applies to those found guilty of promoting deviant religious sects (Article 20); missing Friday prayers three times in a row (Article 21); providing places and opportunities for Muslim followers who have no justified reason to neglect fasting during the month

of *Ramadhan*; and eating or drinking in public during day time during *Ramadhan* (Article 22). In 2003, the government passed another law on violations that would be punished by public caning, *Qanun* no. 14/2003 on *khalwat*. This law regulates *khalwat* and any other activities, which could lead to *zina*. The law mentioned the activities as *haram* (forbidden), and those who breach it could get three to nine lashes in public. In 2014, the government passed *Qanun* no. 6/2014 that expanded activities that would be punished by public caning (see chapter 4). Unlike the previous *qanun*, this one explicitly states that it applies to non-Muslims as well. Hence, this law also extended its power by forcing the implementation of *shari'a* across the board.

Even though caning had already been mentioned within the law since 2002, it was only implemented in 2005 after guidance was passed in conducting this ceremony, GR no. 10 (2005) on technical guidelines for implementation of *Uqubat* (punishment) by caning. This regulation stated the cane must be made of rattan, with a diameter between 0.75 to one centimetre, one-metre in length and not double ended. When doing the caning, the distance between the WH officer, given the task to do the punishment, and the offenders has to be 0.70 to one metre. The officer can only lash the offender's back between the shoulder and hip. During the ceremony, medical staff are required to check the offenders before and after the punishment and if s/he is not fit enough the punishment can be postponed until s/he is declared fit. If the offender is pregnant, according to *Qanun Jinayat* no. 6/2014, her punishment will be postponed until she has given birth. GR no. 10 (2005) states that caning must be held in an open area, so people can see it. The distance between the stage and the audience must be at least 10 metres.

The public caning ceremony is designed to educate those punished so they would realise and regret their mistakes, which will help them towards *taubat nasuha* or sincere repentance; and also deter others. However, the primary goal is public shaming as the convicted would be "*malu*" or shamed and this punishment claimed by the government (as mentioned in *Qanun* 11/2002) will not bring any potential peril for their family.

According to Kamus Besar Bahasa Indonesia, an Indonesian dictionary, *malu* is an emotion which makes a person feels really bad (despicable, low, and so on) for doing something that is not good (not quite right, different from customs, having a defect or inadequacy, etc.). Any acts that do not fit with the prescribed norms can be judged as not quite right or good, or seen as uncommon or not acceptable in one

society. In Indonesia, *malu* or the Balinese term *lek* is also used to describe when someone is worried or nervous that they cannot do a thing perfectly (Geertz, 1973, p.402). Therefore, it has different meanings depending on the context or situation. However, in general it is used to explain a situation when someone has low self-esteem that they cannot do things perfectly or behaviour that is inappropriate and wrong according to norms.

According to Collins and Bahar (2000) *malu* can be translated as shy, shame, bashful, and embarrassed. They conducted a research study about how this term is used in Malay societies (Javanese, Balinese, Acehnese, Minangkabau, and Buginese in Indonesia) and Malaysia, and concluded that it is culturally constructed and could be re-shaped following the socio-economic changes in the society.

The implementation of *shari'a* in Aceh for example, has reshaped the concept of *malu*, as local *qanun* introduced some new standards of moral behaviour which had never been regulated before. A woman who does not veil could feel *malu* as they look different regarding their public appearance, for instance, or their acts could be seen as shameful due to ignoring the *shari'a* regulations. So, *malu* is an emotion which has been exploited by the law as a form of punishment by publicly exposing and penalising offenders. In this case, the government has brought the idea of psychological punishment into its legal judicial system.

Collins and Bahar (2000, p.48) also found that men and women responded differently to *malu*; women tend to become withdrawn and cry out of other people's sight, while men tend to act violently. This could explain some cases in which women who been punished move from the area where they used to live, according to local people, while men tend to respond aggressively during punishment by confronting the officer (*Tribun News*, 28.2.15).¹⁴

According to Nussbaum (2004) some scholars such as Dan M. Kahan argued that shaming as a punishment has powerful expressive effects on the individual and others, as stated above. However, Nussbaum warned that this kind of punishment will not only humiliate the offenders but also degrade their very dignity. By exposing them during public caning, for example, they are not only made to feel ashamed but also left marked in the society in which they will forever be remembered for committing a

¹⁴ <http://www.tribunnews.com/regional/2015/02/28/tak-tahah-dihukum-cambuk-penjudi-asal-sigli-amuk-algojo>

moral crime. It humiliates them as a person and also humiliates people around them, particularly their family.

Shaming punishment particularly in public could lead to stigmatisation towards the offenders and at the same time encourage the society to jointly see it as shameful. Those breaching moral values could be branded as immoral or sinners. In addition, shaming punishment could also mobilise the society to jointly punish the offenders (Nussbaum (2004, p.2).

Conducting caning ceremonies using many religious symbols, attracts people's attention and connects to people's identities. People see the offenders breaching the norms and values of the society, hence they are seen as deserving the punishment. People then participate in shaming the offenders, as discussed in the following section in this chapter. When people engage in jointly punishing the offenders by shaming them verbally, for instance, they set a new norm in which people who breach the *shari'a* are seen as deserving the abuse. Any different response could be seen as supporting the 'moral' crime and categorised as deviant or abnormal. In this case, the state plays significant roles to alienate its own citizens, perpetuate stigmatisation over them, and at the same time divide the society. People who support the regulations become the normal society, while those who breach the law or give support to offenders are categorised as deviant or abnormal. It leads to a homogenised society and potentially propagates vigilante groups to 'normalise' the society (as discussed in chapter 4). On the other hand, by punishing the offenders in public, authorities send a powerful message of the consequences if people decide to ignore the regulations. Authorities also arouse what Foucault (1991, p.58) refers to as a "feeling of terror" by the spectacle of their power to legally the use of violence to punish offenders.

Public caning ceremonies in Aceh have received much criticism from national and international organisations. Human Rights Watch mentioned recommendations from the UN Committee against Torture, which requires the Indonesian government to review Aceh's law regarding the use of corporal punishment.¹⁵ The Commission for the Disappeared and Victims of Violence (KONTRAS) called the caning ceremony a systematic human rights violation and asked the Aceh government to put an end to this practice,¹⁶ of which 59 were held between June 2017 and May 2018, increasing

¹⁵ <https://www.hrw.org/report/2010/11/30/policing-morality/abuses-application-shari'ashari'a-aceh-indonesia>

¹⁶ <http://www.kontras.org/home/index.php?module=pers&id=1005>

from the previous period which had about 24 cases.¹⁷ I would argue this increase could be interpreted in two ways. *First*, it could be seen as the punishment failing to give a deterrent effect in the society. The *second* could be due to growing control in the form of patrols by government official or participation by local people/vigilante groups that report and bring the cases to the *shari'a* police. Amnesty International, the Institute for Criminal Justice Reform and some other organisations highlight that apart from breaching human rights values, other more fundamental crimes such as corruption are ignored.

In March 2018, Aceh's Governor passed a new rule, GR no. 5 (2018). This regulation moved the location of caning ceremonies to penitentiary areas known as Lembaga Permasyarakatan. However, this research was conducted during the period of August 2016-February 2017, under the previous regulations. The governor argued this change was made to prevent children from watching the punishment ceremony and members of the public and journalists recording the event and publishing it on the internet.

The new GR raised some controversy by local members of parliament, religious scholars and Islamic hard-line organisations who argued that the governor should have first discussed it with religious scholars.¹⁸ In June 2018, the DPRA officially registered a lawsuit against GR no. 5 (2018) about the implementation of *jinayat* law to the Supreme Court. The governor has also been criticised for showing empathy toward immoral offenders who do not even feel ashamed of their acts. Some caning penalties have been moved to penitentiaries following the regulation,¹⁹ however, some others are still conducted in the mosque yard.²⁰ The authorities claimed that the new GRs have no detail of how the caning ceremony in the penitentiaries area can be conducted. They also claimed that the regulations lack details including the employment of a female officer for female offenders, if no female officer exists in the region.²¹ This further indicates male hegemony not only regarding the production of the law but also its practice.

¹⁷ <https://nasional.kompas.com/read/2018/06/27/10463711/kontras-sebut-penyiksaan-hukum-cambuk-di-aceh-meningkat>

¹⁸ <http://aceh.tribunnews.com/2018/04/16/batalkan-pergub-cambuk-di-lp>

¹⁹ <https://www.bbc.com/indonesia/indonesia-44125317>

²⁰ <https://news.detik.com/berita/d-4113629/mengapa-pasangan-gay-di-aceh-dihukum-cambuk-di-halaman-masjid>

²¹ <https://kumparan.com/@kumparannews/hukuman-cambuk-di-banda-aceh-masih-berlangsung-di-luar-penjara-27431110790545256>

According to GR no. 10 (2005) on technical guidelines for implementation of *uqubat* (punishment) by caning, during the ceremony a male offender is required to stand on the stage while females are asked to kneel. This different treatment towards men and women signals the different perceptions towards their bodies. The position for females also makes her body looks smaller than usual. Bending on their knees makes a person look weak and this position is often associated with an attitude of subjugation. The requirement to ask women to kneel down during the punishment may be aimed to appear to protect them, to make the caning seem less severe, however at the same time these rules perpetuate the idea that women are physically weaker than men. Women are considered unable to face their punishment like men who can stand bravely when confronting their penalty. Hence, it reproduces the concept of masculinity and gendered hierarchy. In many traditions in Indonesia bending on one's knees also symbolises servitude, devotion and respect towards someone who is seen as higher. In slave culture, for example, kneeling showed that a slave was powerless in front of their master and this body language also symbolised their servitude. Meanwhile in many religious traditions, kneeling is one way to show the worshipper is weak in front of God and it could also be a way to express a devotion.

The implementation of the public caning ceremony underline the state's (in this case the Aceh government) power to not only interpret religious text to construct legitimate law, but also punish those who do not obey the interpretation. I would argue the character and practice of Islamic law (*shari'a*) in Aceh today is influenced by the legacy of Dutch colonialism. As discussed above, the indigenous judicial system in Indonesia was reshaped, which eliminated its flexibility and fluidity in practice. Local law (customary law and Islamic law) was reconstructed into a fixed legal form following European law. The homogenising of local customary law with the involvement of state coercion in practice, continues to exist in the post-colonial context including within the implementation of Islamic law today.

Through the public caning ceremony, the authorities also disseminate pain and humiliation, which promotes institutionalised violence, violence that is endorsed by the government. Therefore, *shari'a* is not just about regulations that are made in the name of Islam, but it is also about power and domination of whoever has the authority to define, construct and enforce it. Through the public caning ceremony, the government makes its power visible as the one who has the authority to punish people

who do not follow the orders given. Offenders are punished physically and psychologically in three different ways, through: physical torture, public shaming, and incarceration.

The sermon during the caning ceremony uses a religious text to explain and justify the punishment and is also a way to re-assure the reproduction of the *shari'a* knowledge continues. As Foucault (1980, p.52) said “it is not possible for power to be exercised without knowledge, it is impossible for knowledge not to engender power”. Here, the authorities exercise power by inserting a sermon as part of the ritual during the public caning ceremony. During the sermon I observed, the preacher explained that the ceremony was part of the government’s effort to enforce God’s law and at the same time he also invited the public to not only witness *shari'a* reinforcement but also to participate in it. As a preacher, he is considered as someone with knowledge about religion, hence his words are valued as valid and the truth. Other religious symbols, such as the mosque which is a sacred space for Muslims, the recitation of verses from the holy Quran, emphasises the connection between the ceremony and religion. It also enhances the society’s identity as Muslims, which strengthens their sense of belonging and enthusiasm to participate.

The sense of belonging through religious values and identity make people internalise the *shari'a* values as part of their life. The power is circulated between the authorities and the society. The society has a strong belief in their religion, particularly as they are proud of their region as the gateway of Islam in Indonesia. This drives the authorities to embed the religious identity into local law or *qanun* which increases people’s sense of belonging. The authorities, through their legal bodies and institutions, make sure the *qanun* is imposed and followed by the people and at the same time encourage the society to participate in upholding it. As *qanun*, which represents *shari'a* in Aceh, is claimed as God’s law, people are keen to uphold it and support it as a form of their devotion to God, by monitoring their neighbourhood (see chapter 4) or participating in shaming offenders in public caning ceremonies. The public caning ceremony also invites people to reinforce *shari'a* by witnessing what is perceived by many as a sacred event.

During the ceremony, authorities read all personal details of offenders to the public, which means their identities are not only recorded officially, but people in the audience will also remember them, particularly as many journalists and members of the public take pictures and video recording of the event. Their faces appear in

popular mass media as well as social media, so the humiliation continues after the punishment ceremony finished. Members of the audience also engage with the caning ceremony by verbally humiliating and shaming the offenders. The authorities' goals to make the offender ashamed, as mentioned in the explanation of *Qanun* no. 11/2002, are achieved.

5.4 Punishment Ceremony: A Public Humiliation

According to Foucault: "The public execution is to be understood not only as judicial, but also as a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested" (Foucault, 1995, p.47). Breaking the law means violating the rules that were made by the authorities in the name of defending *shari'a* as a form of fidelity to God. Hence the authorities want to make sure no violations against the law will be tolerated, and punishment is made not only to give a lesson to the offenders but also as a warning for the people to obey the rules. While the officer's face is covered to protect their identity, the face of the offenders is open for people to see. Additionally, as mentioned above, the offender's personal details are publicised.

As a public shaming punishment, people's engagement in humiliating the offenders is encouraged by subjecting them centre stage to receive their caning. In addition, the authorities make the offenders distinct as they are required to wear a white outfit, which could also symbolise 'atonement'. In Indonesia, white is associated with purity, hence the white outfit emphasises the idea that this is a purification ceremony, a way of repentance for the offenders who have committed 'sins' by violating the law.

The public punishment, as Foucault said, is also where the power is manifested. Through the caning ceremony, the authorities show their power to punish those who do not obey their rules, humiliate them in public and bring up religious discourse as justification. By beating them in public, the authorities demonstrate their power to legally injure the bodies of those who do not obey the law. They are punished, beaten by caning in a violent ceremony celebrated and exhibited to the public.

Through this ceremony, the authorities also exercise their power as the single authoritative power of religious text interpretation which must be followed by the people. This ceremony runs some rituals, in which a stage is established to exhibit and

punish the offenders, some seats are prepared for official representatives to witness the public punishment, a sermon is delivered before the caning, and some government officials are assigned for the ceremonies to read the punishment, monitor the process and execute the caning penalty.

Field notes, 28 November 2016

A van came to bring all the people convicted, the condemned bodies that will be punished in front of the public today, three men and two women. Today they face not only the punishment charged towards their bodies, but they also have to face the public who will see them being punished in the middle of a temporarily built stage. Like a theatrical arena, they will stand in the middle of the stage watched by many people who have been waiting since morning and also by those who later on will see them being punished via social media or news as many journalists and people are documenting the event. They experience not only physical punishment, but also mental due to public shaming. The pain from the punishment might only stay for several days, weeks or months, but the shame will last forever. It might not only be them who will remember the punishment, but also people who watch it could possibly remember their face and 'brand' them with a negative stereotype. They were punished for failing to obey the appropriate behaviour according to local shari'a law. By punishing them in public, the government sends message of its power to punish those who breach the rules and also give the public a chance to jointly punish them through humiliation.

Before the ceremony began, through a loudspeaker megaphone the officer asked male and females in the audience to segregate, while children under 18 years were asked to leave the area. However, no one bothered about the announcement, people were still mixed and children were still around and there were no further actions conducted by the officer to enforce the rules. The ceremony opened with recitation of a verse from the holy Quran:

The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in

Allah and the Last Day. And let a group of the believers witness their punishment. (An Nur: 2)

The Quran verses highlighted how it is used as justification for the caning ceremony against those who have committed adultery. There was no explanation brought about regarding the text and the context of the religious verses read, it was used literally without any further study. It was then followed by a sermon and prayers by a male preacher. He began his speech by saying: “The attendees, all the worshippers I glorify. We are now in this happy moment in front of or in the courtyard of the house of God”.

Here the sermon described the ceremony as a happy moment, probably due to its objective to enforce God’s law and as a form of punishing the sinners with expectations that they will repent and be forgiven for their mistake and sins. As a repentance ceremony, it is a happy moment, as it will purify the offenders from their sins.

The sermon then quoted another religious text saying, “One who repents from sin is like one who has not sinned”. He also said if people stay away from and hate sinful activities, God will help them and it will compensate towards their sins. He wishes those being punished that day by public caning would repent because God loves those who repent. He said: “May our brothers who will be beaten, (with) *uqubat* or whip, are already being repentant. *Insha’Allah*. Because Allah loves the repentant most”. This sermon reminds people to be obedient to *shari’a* and encourages them to hate any immoral behaviour. He said:

If you stay away from all sinful deeds, for example, if we see any behaviour... crimes either drinking alcohol, gambling... we hate all those behaviours, we are disgusted seeing all that, then Allah will grant us, because our attitude will repent for our other sins, if we hate all misbehaviour that could lead to great sins.

People are told not only to avoid committing moral crimes but they are also encouraged to hate them. This narrative could lead to alienation or violence towards those committing the moral crimes as people were told if they hate the crimes it can repent for their other sins. This is what Peters (2005, p.30) referred to as the vertical dimension of the law, in which it claims to affect the reward and punishment in the afterlife. The concept of repentance itself is strongly associated with the hereafter, as

in the caning ceremony people were told those who repent during their life would be forgiven and will be sinless.

During preaching, one woman in the audience standing nearby me was whispering “that person who is speaking (the sermon), is he pure (clean) himself?”. Meanwhile another said to me, those who got this punishment are mostly poor people, high up people who are cheating (committing adultery) would not got any punishment. The unjust treatment within the implementation of *shari’a* in Aceh has been mentioned in other cases as well. During dress raids for example, the *shari’a* police have been criticised for only targeting people who ride motorbikes, while those who drive cars have never been touched.²² This unjust treatment was also mentioned by Insana, a local woman I interviewed. She admitted having certain privilege, which make her untouched by the law. She gave an example of a veil raid, in 1999.

“When did the Islamic Shari’a start to occur? It was near the end of the conflict. It began with cutting women’s hair. So, back then women who did not veil were subject to social norms. Her hair would be cut and else[other punishment]. And who were affected? Those who do not have a car to travel. I am safe, Des [my name]. Why? Because I have driven since I was in high school. So, I am safe, no one can touch me inside the car. But those who use public transport, they would not dare. Why? Because in the public transport their hair would be cut”.

This highlights the unjust application of *shari’a* which make some people in the society relatively untouched, while others are prone to any form of disciplinary event or punishment.

Back to the caning ceremony, the sermon ended his speech by reading a pray before beginning the caning penalty. The officer read the verdict, “The *Shari’a* Court verdict, In the name of God the most gracious, the most merciful. In the name of justice based on belief to one almighty God...”. The officer read the crime committed by the offenders and followed by reading all their personal details from complete name, their parents’ name, place and date of birth, age, sex, nationality, address, religion, occupation and education. The reading of all the offenders’ identities through loudspeakers not only shames them but also their families, and all other identities associated with them such as their place of birth. For example, during the reading of the verdict, when the officer mentioned the place of birth of the punished, I heard a person in the audience say, “this person embarrassed Sigli” (a town in Aceh). Hence

²² <https://www.merdeka.com/peristiwa/pemotor-di-aceh-kena-razia-baju-ketat-pengendara-mobil-aman.html>

the government claim in *Qanun* no. 11/2002 that this kind of punishment is risk free is not necessarily true, for the aforementioned reasons.

On the caning ceremony that day, there were three kind of moral crimes committed by the offenders. The first couple were punished by eight lashes each for committing *khalwat*. The second couple were sentenced to 25 lashes each for committing *ikhtilath*, however only the man was punished because many of the audience said his partner was currently pregnant which make the punishment temporarily postponed. The last couple got 100 lashes each for committing *zina*. People were surprised when they heard there were 25 to 100 lashes punishment, as they did not expect to see that many. The final number received would be the number mentioned according to the law minus the time they had spent in jail during detention time.

After reading all the verdicts, the officer once again warned people that the event was only for those aged 18 and over, so those coming with children were advised to leave the area. Still, many parents and their children stayed around, and some under aged children were not accompanied by their parents. One audience member even argued that it was fine for children to watch the event so they could learn how not to make the same mistake.

The officer with the megaphone asked all the officers in charge of the caning ceremony to get ready for the caning as well as the offenders. The first man stepped on to the stage guarded by two male *shari'a* police officers who brought him to stand in the middle, watched by everyone who had been there since morning to witness this public event. The officer who was to perform the caning had been waiting to do his job on the stage. Wearing a brown outfit and full-face mask to hide his identity the officer stood on the left side behind the offender holding the regulation cane as per GR no. 10 (2005).



Figure 5.1. Male Offenders punished in public caning ceremony

The officer started doing his job by giving the condemned bodies seven public lashes. After that, the second person who was a woman came on and knelt down in the middle of the stage. At this time, people were shouting ‘*wooo*’ at her. This highlighted the differences in how people treat men and women when they have committed moral crimes.

The punishment ceremony continued with the man who committed *ikhtilath* and got 22 lashes. No one shouted ‘*woo*’ at him as they did towards the woman. After him, the officer called a man who had committed adultery to step on to the stage. It was, again, followed by shouts of ‘*wooo*’ shout by the audience. In many societies in Indonesia, Aceh in particular, adultery is considered as the worst violation, thus anyone found committing this act would receive harsh social punishment.

When the man stood in the middle of the stage, I heard someone in the audience say, ‘he is small’, but no further comments were made which is different from the same comment I heard later on towards the women offender. The punisher started to flog him, and one woman (A1) in the audience said:

A1: It is not painful

Me: How come it is not painful?

A1: You see that he is just like this (showing that the punished man was just being quiet), it means he is not in pain. Tomorrow he will do it again a hundred times

Me: *Ya Allah* (Oh God...)

A1: Do not worry, it is to give a deterrent effect, he will commit (the (the same crimes) again if ... (does not continue her sentence)

Other A2: He needs to buy **strength** medication (energy booster medication)

A3: Be strong a bit more (gives support-whispering)

A4: When it is finished, do it again (the crimes), do it again on Saturday night

The last person punished that day was a woman who had committed adultery and got 100 lashes. During this caning, there were two officers prepared to swap responsibilities after every 20 lashes. One officer read her verdict, she stepped onto the stage guarded by two female *shari'a* police officers who took her to kneel down in the middle.



Figure 5.2: Female offender punished in public caning ceremony

One member of the audience said, “I should have brought a *tongsis* (a selfie stick for a mobile phone), so I would not be tired [recording the event]”. When the officer started the caning, I heard someone in the audience say, “a bit harder, so (she) will not repeat it again next time”; another said, “that’s her fault committing this, embarrassing her mother”; “the clothes [they wore] must be double”. Some others also talked about the size of her body that was small and some others replied “there is no way she is small, if she can do this [adultery, it] means she is already grown up. If she is already grown up but not knowing how to do it, she must be no longer attractive”. This comment highlights how being an adult single woman could be interpreted as not being attractive, a label that would not be given to a man. The public response during the ceremony showed how women were being subjected to more abuse and humiliation than the men. Some members of the audience specifically targeted women offenders who were punished.

Here, we can see gender assumptions and expectations toward women which seems conflicting and contradictory. At one point, women are seen as passive subjects particularly regarding their appearance and whether they are attractive for the opposite sex. Here, women are expected to be attractive to be able to attract men, while men are active subjects, the ones who have power to choose women they like and they find attractive. However, when it comes to moral crimes, women become the active subjects, the seducers that provoke men to sin. They are also often ‘branded’ as naughty and flirtatious and causing men to commit moral crimes. Here, the discourse of woman, as a seducer is produced and re-produced not only in everyday life as discussed in chapter four, but also during a public punishment ceremony.

The caning ceremony implemented is also gendered, particularly regarding men and women’s position during the punishment. GR no. 10 (2005) gives no explanation regarding this. Three of the four Sunni schools of law rule that men must stand and women must kneel during punishment (see *Al-Mawsu'a al-fiqhiyyah*, 1989, p.248). This rule is sometimes attributed to Ali bin Abi Thalib (companion and son-in-law of the Prophet) who is reported to have said that a woman must kneel while being flogged (*Musannaf Abd al-Razzaq al-San'ani* [d. circa 827 CE]; number 13530). The requirement for women may be concerned with protecting their modesty, to minimize the impact on them or to protect them, however at the same time it also perpetuates the idea that women are weaker than men and reproduces the concept of masculinity and gender hierarchy.

Through this public caning ceremony, control over women’s bodies is being disseminated and sustained. Women are expected to be attractive and weaker than men, and their appearance also needs to be regulated so they have to kneel during punishment, women need to be covered so they do not distract or seduce men and they need to be protected by imposing partial curfew (as discussed in chapter 4).

On the other hand, the caning ceremony, which is intended to be a lesson, is seen more as a public spectacle. Instead of learning and taking that moment to consider the ‘moral crimes’, it becomes entertainment which people record and publish on their social media, some even make jokes or laugh over it. At the same time, it is a place where people see how the state endorses the use of violence to punish people. By showcasing the caning ceremony to the public, the authorities also transfer the fear to the people, exposing what will happen if they breach the regulations. The government exhibits violence as the ‘appropriate and lawful way’ to

punish people. The justification of violence could be used by some people or vigilante groups to conduct their own raids and punish those who are considered to be breaching local values as mandated in *qanun*, especially as people are also encouraged to hate the crimes in the sermons given during the public caning ceremony. Additionally, even though authorities forbid children and those under 18 years old from watching the ceremony, many did so and one person in the audience responded by saying, “Let them watch it so they know they should not do that (breaching moral values) in the future”.

The ceremony also involved lots of religious symbolism, from the place chosen, sequence of events which includes Quran recitation, a sermon and prayers. The use of religious discourse is to justify that the judgment of the government is the judgment of God. Humans have the power to punish offenders in the name of God. Here, the power is exercised in a chain from the lawmaker, the judicial court, to the officer during the caning ceremony. It is then transferred to the people who think that the offenders deserve the punishment and being humiliated as they have breached the *shari’a* law which is not just a law for them but also part of their identities as Muslims.

During the ceremony, even though many were shouting at the offenders and trying to embarrass them, by making fun and jokes about them, there were a few who showed empathy; some women tried to give support to them and wish them to be strong. However, they chose to whisper their empathy to the person next to them, which meant their voices were less heard. This might be because they did not want to look different amidst the crowd and be seen as supporting the moral crimes. People avoid looking different in a society that is getting more homogenised through religious discourse (see chapter 4). Being different could be seen as against the norm that potentially leads to exclusion. Additionally, some people who disagree with the punishment may have chosen not to watch the ceremony as they found it only humiliates the offenders and they do not want to perpetuate the idea. One local woman, Insana gave her view:

And in my opinion, regardless whether caning is allowed or not in Islam, so here I discuss about it outside the religious context, I think I might have commented about it on Desy’s (social media). In my opinion regarding the public caning, those who watch it, they do not get any good spiritual message. Because we comment about other people’s sins, while at the same time we

watch others being punished for their sins. We, ourselves are full of sins, so I am not sure if it's a good spiritual experience for the audience. Again, this is outside the religious context.

This illustrates that some try to challenge the dominant hegemony through different ways. Discussion about how women negotiate and challenge dominant hegemony will be elaborated in detail in chapter six.

5.5 Conclusion

This chapter highlights how the practice of corporal punishment remains in the post-colonial state, either as a product inherited directly from the coloniser's law or as a result of transformation of the judicial system during the colonial era. The case of Indonesia emphasises how the death penalty which still exists in the KUHP today was inherited from Dutch law, the WvSNI, which was introduced in 1918. Meanwhile, Dutch policy during the occupation in Indonesia also changed the character and practice of the dual judicial system in Indonesia in the pre-colonial era, in which Islamic law and *Adat* law worked together supporting each other. This thesis argues the implementation of Islamic law in Aceh today inherited some legacy from the Dutch judicial system in at least two aspects: 1) codification of law into one fixed standard, neglecting diversities in religious text interpretation; and 2) the state/colonial/local government roles with all their supportive institutions to construct the legal standard, monitor and reinforce the implementation in the society. This system created an elite, a hierarchy and bureaucracy that aimed to maintain power, control and domination in the colony. Thus, the application of modern day *shari'a*, which is often claimed to be against Western values, has indeed retained the legacy of European colonialism.

Earlier in this chapter I mentioned Foucault's four major transitions of punishment from the pre-modern to modern era in the European context: the termination of punishment as a spectacle; the focus of punishment on the criminal not the crime; the judicial sentences no longer determined by the judges who impose punishments in conformity with the law but rather by 'experts' such as psychiatrists or social workers; and punishment as reform and rehabilitation instead of retribution (Gutting, 2005). This chapter demonstrates that punishment as public display remains in Aceh, following the implementation of the public caning ceremony, first mentioned in *Qanun* no. 11 (2002). In a public caning ceremony, what is punished is the crime

and not just the criminal, but only for certain crimes, particularly those regarding morality. The penalty applied to the criminal is determined by the judge in conformity with the *qanun* that stipulates the type and amount of punishment for every crime. The public caning ceremony is also considered as retribution in the name of enforcing justice as stated in the verdict read during the ceremony. It is also claimed as a way for the criminals to repent from their crimes which are considered as sins.

To conclude, this chapter demonstrates that what Foucault considered as the character of punishment in the pre-modern era, is still applied in today's post-colonial state, Indonesia. The public caning ceremony punishes people in two ways by: 1) tormenting the body physically and 2) torturing the offenders psychologically by shaming them in public as well as causing possible distress during detention prior to punishment. The shame experienced does not end after the ceremony, as people can remember their face and identities as they are announced to the public. In addition to that, the effects might go beyond local territory as people take photos and videos and send them to others or even post them on social media without censoring the offender's face.

The modernisation of the judicial system during the colonial period as discussed in this chapter brought some changes to the character and practice of Islamic law which was plural and fluid during the pre-modern era. Islamic law in the modern era tends to eliminate the pluralism of opinion on religious text interpretation and promotes homogenisation through its codification into fixed standards or laws. Unlike the pre-modern era in which Islamic law was in the hand of jurists, in the modern application of Islamic law, the state or government and its institutions monopolise the codification, implementation and reinforcement of Islamic law.

Overall, this chapter highlights that the public caning ceremony within the application of Islamic law in Aceh incorporates Foucault's character of pre-modern (physical) and modern (psychological) punishment. Additionally, the application of Islamic law in Aceh has also inherited the character of 'modern law' brought by the colonial system, as described above.

This chapter also sheds further light on how gender is constructed, how men and women should behave, and how punishment is conducted under Aceh's *shari'a*, particularly in relation to the public caning ceremony where men and women are treated differently. This highlights different gender constructions and expectations, which perpetuate gender hierarchy.

People also treat women offenders differently, as they were humiliated more verbally during the ceremony. Women are often seen as the guardians of morality (Collins and Bahar, 2000), hence being punished for breaching moral values is not only an embarrassment for themselves, but also their parents who will be judged that they cannot taking care and teaching good morals to their daughters. Women are expected to be self-effacing because they represent the society's honour and are considered the face of *shari'a* in Aceh (see discussion in chapter 4).

The most fundamental value of Islamic law is to protect the common good of humankind (Black et al., 2013), Islam is viewed as a mercy to all creation (*rahmatan lil-' alamin*). In 2005, the Islamic scholar, Tariq Ramadan asked the Islamic world to suspend corporal punishment, stoning and the death penalty.²³ He argued the conditions required in order to implement corporal punishment as mentioned in the sacred texts are difficult to re-establish, which make the application of *hudud* (divine punishment) "almost never applicable" in modern society (Ramadan, 2005). He was also concerned about the repressive and unjust application of Islamic law in many societies all over the world, which often targeted poor and powerless people.

Here, I would like to emphasise, this research is neither based on an aversion towards Islamic law, nor on sentiment towards Western. I would argue the formalisation of *shari'a* has brought religion into the political domain, which makes it prone to any particular interest. As a Muslim, I believe Islam is a mercy to all creation. Hence, Islamic law should prioritise public interest rather than only focus on people's private lives and morality that does no harm to others. Like Tariq Ramadhan's statement regarding corporal punishment in Islam, I also refuse to be silent amidst "the unjust application of my religious references".²⁴ The construction and application of Islamic law in many societies is subject to Islamic scholars' thought in the region. The sacred texts might need to be revisited and reinterpreted amidst the dynamic in contemporary society (Black et al., 2013, p.237). However, monopoly over the interpretation of sacred text by the state removes any discussion and debates amongst religious scholars, which was the common practice in the pre-modern time.

²³ <https://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world/#leg3>

²⁴ <https://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world/>

Chapter 6. *Shari'a* and Women

In chapter 4, I explained how *shari'a* regulates men and women and showed that the local practice regulates women more than men. In this chapter, I will explore how women respond to *shari'a* regulations about their bodies. My aim is to investigate how women negotiate with all the regulations applied to their bodies, as well as gender role expectation in the society, and how they perform their agency, particularly, to gain position in public space.

In looking at how women in Aceh negotiate these regulations I will be emphasising women's agency, in contrast to the way that women in the Global South are often portrayed in the West as passive victims who need to be 'saved' by Westerners. I would therefore like to begin this chapter by looking critically at these portrayals.

America did not go to war in Afghanistan so that women there could once again feel the sun on their faces, but the reclaimed freedom of Afghan women is a collateral benefit that Americans can celebrate. After five years of Taliban rule, women in Afghanistan are uncovering their faces, looking for jobs, walking happily with female friends on the street and even hosting a news show on Afghan television. (*The New York Times*, 24.11.2001)

I remember reading this article titled "Liberating the Women of Afghanistan" which highlighted the US war on terror in Afghanistan and how it brought 'freedom' for women by unveiling them. The US media and some feminist movements celebrated this liberation of women from the Taliban, who claimed its aim was to impose (their interpretation) of Islamic law.

Unveiling women has always been perceived as an effort to liberate them, as if their dress has curbed them from anything they could possibly do. As Rich (2014) said, since the dawn of European colonialism veiled women have been used to symbolise oppression towards women in Islam, discourse which was used to justify the colonialist enterprises (see also chapter 3). During French colonialism in Algeria for example, unveiling women was one of the main political doctrines promoted by the coloniser in the name of civilising and liberating Algerian women from the Arab patriarchal culture. As Fanon (1965, p.37-38) wrote:

If we want to destroy the structure of Algerian society, its capacity for resistance, we must first of all conquer the women; we must go and find them behind the veil where they hide themselves and in the houses where the men keep them out of sight.

Fanon highlights how French colonialists described Algerians as barbaric and uncivilised, so they needed to liberate the women and bring them to civilisation. Throughout history, women's bodies, the veil and Islam have been a contestation space. The veil is often seen as a symbol of women's subordination to men or associated with Islamic fundamentalism (Butler, 2009, p.123, Brenner, 2018). It is also often associated with backwardness and the unveiling often indicates that one has adopted the 'advanced' values of Western modernisation (see Ahmed, 2011). In 1899 for instance, Qassim Amin, an Egyptian lawyer who was also known as a women's rights advocate, published a book *Tahrir al-marrah* (*The Liberation of Women*) in which he emphasised the need for cultural and social transformation in Egypt, particularly by abolishing women's veil (Ahmed, 1992). Women's bodies are trapped between those who want to "protect" and "liberate" them by veiling or unveiling them. This was also the discourse during the US war on terror in Afghanistan.

The twin figures of the Islamic fundamentalist and his female victim consolidate and popularize the view that such hardship and sacrifice [is] for Afghanistan's own good. Following the September 11th attacks, the clad body of the Afghan woman became the visible sign of an invisible [one] that threatens not only "us" citizens of the West, but our entire civilisation. (Hirschkind and Mahmood, 2002, p.341)

Restrictions put by the Taliban towards women such as prohibiting them from employment, forcing them to wear the veil, particularly the *burqa* which covers their body head to toe, has given the West a way of, once again borrowing Spivak's term, "saving brown women from brown men". The Taliban's harsh treatment towards women brought justification for the Western military allies to rescue and liberate them, which was symbolised by the unveiling from their dress. As First Lady of the US, Laura Bush claimed "Because of our recent military gains in much of Afghanistan, women are no longer imprisoned in their homes. They can listen to music and teach their daughters without fear of punishment".²⁵ The US military invasion in Afghanistan claimed to have freed Afghan women and brought them to civilisation where they can listen to music, as if this is what Afghan women wanted.

Within history, the West often portrays itself as the saviour and the one who brings civilisation to women in the Global South. In 1820, it was the British East India

²⁵ <https://www.bushcenter.org/publications/articles/2013/02/radio-address-by-mrs-laura-w-bush-crawford-tx-november-17-2001.html>

Company that was the ‘saviour’ of India’s woman from the practice of *sati* or self-immolation of a widow on her husband’s funeral pyre (Zakaria, 2015). Almost two centuries later, it was the US military and its allies who were the saviour of women in Afghanistan, in other words, the West once again saved women in the Global South from their gruesome religious/local culture as well as male patriarchy. Even though the Taliban and Western attitudes seem in contrast, both attitudes represent forms of control over women which serve political power and interest and at the same time undermine women’s agency.

Islam is often portrayed as a religion with a strong patriarchal culture and the application of Islamic law is often described as restricting and marginalising women. In one of the most provocative articles published in *Time*, Lisa Beyer (2001) wrote about ‘Women in Islam’ in which she said “it is clear that the religion has been used in most Muslim countries not to liberate but to entrench inequality”. Her article goes on to describe women’s marginal roles in Islam, from inheritance law, polygamous culture and easy male access to divorce, a husband’s right to beat his wife, female genital mutilation, to the “most common debate” about Muslim women, that is, veiling. As mentioned earlier, the veil is often seen as a symbol of oppression and women’s subordination in Arab/Muslim culture. In her article, Beyer further claimed that women achieved the greatest degree of equality only when they left Islamic law in favour of secular rule. This narrative is rooted in Eurocentric/Orientalist epistemological assumptions of the eternal male patriarchy of Arab/Muslim cultures that determined women’s subordination (Said et al., 2015). This assumption led to the belief that women in Arab/Muslim societies needed to be saved from their men and their ‘oppressive’ culture. This is how the “white man’s burden” (borrowing Rudyard Kipling’s term) is being preserved and this time upon the veiled women of Afghanistan. The West once again has set a standard of liberation for women of all cultures and backgrounds.

The stories above are one of the reasons that attracted my interest toward women and the implementation of *shari’a* in Aceh, Indonesia. Indonesian Islam is often described as “the Smiling Face of Islam” (Moazzam, 2012), however, since the collapse of the New Order regime in 1998 much has changed, including the birth and rise of Regional Islamic Regulations (*Perda Syariah*) in many provinces in the country as well as the autonomous implementation of *shari’a* in Aceh. According to Buehler (2016) between 1998 to 2013 alone there were 443 *shari’a* regulations

adopted in Indonesia, which clustered in six provinces: Aceh, West Java (including new province of Banten), East Java, West Sumatera, South Kalimantan, and South Sulawesi. Buehler and Muhtada (2016) analysed the content of 422 local *shari'a* regulations in Indonesia following Bush's (2008) categorisation. According to Bush (2008) the first category is directly linked to Islamic teaching which includes rules related to religious skills and obligations such as Quran recitation and paying *zakat*, praying requirement, as well as rules regarding religious symbolism like Islamic attire. The second category is about moral teaching which includes regulations regarding "public order and social problems" such as gambling, alcohol drinking and prostitution. Buehler and Muhtada found that 60 percent or 252 regulations are about Islamic teaching and 40 percent or 170 rules are about regulating morality. Their research further detailed the contents of Islamic teaching are 25 percent regulating *zakat*, 23 percent is about Islamic knowledge and skills, 15 percent regarding micro-finance, 11 percent regulations to foster "proper faith" and prohibit "islamic sects" particularly mentioning Ahmadiyah, 10 percent regulates Muslim attire, and 16 percent regarding other issues relating to Islamic teachings (Buehler and Muhtada, 2016, p.268). Meanwhile, regarding morality issues, the majority of the regulations or 51 percent (85 regulations out of 168) were about banning alcohol consumption, 29 percent prohibiting prostitution, two percent banning gambling, and the remaining 18 percent are about promoting "social order" and "prohibiting sins" (Buehler and Muhtada, 2016, p.269). Thus, there are about 90 regulations, which arguably specifically pertain to women, that is regulations regarding Muslim attire and prostitution. Even though the former usually do not mention in detail how women's outfits should be, in practice it is often interpreted as wearing a veil and sometimes including prohibiting them from wearing trousers (for example, in Aceh, see chapter 4). Meanwhile regarding prostitution, it is also often associated with women, because they are the ones who are often portrayed as the seducer (as discussed in chapter 4).

Pisani and Buehler (2016) categorised *shari'a* regulations into three different types depending on their potential appeal to constituencies. The first category consists of regulations that mainly appeal to local governments and are most likely supply driven, such as *zakat* which will bring cash to be regulated by the government, as tax would be undeniably a more unpopular policy. The second category relates to regulations that increase patronage and lets the authorities expand their networks or gain support from respected people, which could be their vote-getters, such as by

promoting Islamic knowledge teaching through Islamic education which could potentially boost the government's popularity amongst Islamic scholars. The last category involves regulations that aim to appeal to the constituent, such as dress code, which could potentially increase the local government's Islamic credentials and boost their political popularity.

The research above showed that legislation of *shari'a* regulations has gained popularity in recent years. In Indonesia, although many provinces have legalised some, it is only Aceh which has the autonomous right to implement *shari'a* fully, particularly since 2002. Aceh's formulation of *shari'a* has raised controversy since the first *shari'a* regulation came into effect, *Qanun* no.11/2002, which required people to wear Islamic attire. Even though the law regulates men and women, in practice women are affected the most, as they are required to cover their *aurat* by covering the whole body with a loose-fitting dress except the hands and face, and to wear a *jilbab* (Human Rights Watch, 2010c), while men are only required to cover between the navel and knee. Human Rights Watch said the law has denied many people especially poor people, women and youths their rights to express their faith, identity and morals. Therefore, to raise the same question asked by Lila Abu-Lughod (2002), "Do Muslim women really need saving?" (2002). The next section will critically analyse a range of definitions and concepts of agency applied to the context of Aceh.

6.1 Agency and the Subaltern

Religious traditions are often described as denying women's agency, marginalising their roles and privileging men. In the context of Islam, for example, as mentioned early in this chapter, Muslim women are often seen as victims of Arab/Islamic patriarchy (Pratt, 2013, Said et al., 2015, Mahmood, 2005), and often portrayed as subordinate, helpless and in need of being liberated from their native patriarchal culture and religion.

In chapter 4, I discuss how Aceh's *shari'a* regulates men and women in the society. The chapter highlights that women encountered more regulations and restrictions under local *shari'a* compared to men, which raises some questions for me about whether they need to be saved from their own culture and religious tradition. Are they subordinate, dependent, secondary, and unproductive as de Beauvoir (1953) would suggest? In this chapter I want to discuss how women perform their agency?

How do they challenge the narrative in their society that tries to limit their access to leadership in public space? (see chapter 4). How do they negotiate with the traditional gender roles expecting women to be responsible for nurturing their children? In order to answer these questions, I would like to elaborate what is meant by women's agency. In this section, I will discuss different notions of agency, beginning with the concept from the World Bank and de Beauvoir that I found unhelpful, then moving on to some others that I found more helpful, such as those from Nancy McNay and Saba Mahmood.

I would like to begin with the definition of agency from the World Bank because as an international donor organisation the institution does not only have programmes and policies to promote women's agency but also raises funding for those programme in many countries, particularly the Global South. For instance, In Aceh and some other areas in Indonesia that were hit by natural disasters, like Nias and Yogyakarta, the World Bank serves as trustee for the Multi Donor Fund (MDF) for Aceh and Nias, which pools USD 655 million from 15 donors, and the Java Reconstruction Fund (JRF) which pools USD 94.1 million from seven donors (MDF-JRF Secretariat, 2012). The MDF and JRF funded projects brought some programmes to those areas to promote gender equality and empowering women as well as strengthening their voice and agency in the post-disaster reconstruction. It can also dictate the policy reforms of donor-recipient countries (Jahan, 1997). Thus, I believe it is important to see how the organisation defines women's agency as this represents the policy they bring to the countries of the Global South.

According to The World Bank (2012), agency is "an individual's (or group's) ability to make effective choices and to transform those choices into desired outcomes". Another report by the World Bank described agency as "the capacity to make decisions about one's own life and act on them to achieve a desired outcome, free of violence, retribution, or fear (Klugman et al., 2014, p.1). From these definitions, agency is associated with freedom and choice, then how are these defined when it comes to women's agency? According to the World Bank, agency is associated with five elements: "control over resources" (ability to earn money and own materials), "ability to move freely" (freedom to go anywhere outside the house), "decision making over family formation" (freedom of regarding relationships and married life), "freedom from the risk of violence" such as domestic abuse, and "ability to have a voice in society and influence policy" by engagement in decision making

institutions (The World Bank, 2012, p.150). Arguably, this definition is based on assumptions about gendered public and private space.

In discussing agency and the subaltern in this chapter, debates about domestic and public space take a central position. The public domain is often associated with men and masculinity, while the private one with women and femininity (Hearn, 1992, p.2). However, I found such a classification problematic as it needs to be located and situated within various times, cultures and traditions. Narratives of domestic and public space often justify political moves to ‘liberate’ women of some cultures, as in the case of Afghanistan and Algeria mentioned earlier.

In discussing gendered space, I would like to discuss further the work of Simone de Beauvoir through her book *The Second Sex* in which she argued that domestic responsibilities have strangled women from their liberation. In this kind of situation, she argued that for a man, it is his wife’s responsibilities to do all the housework as well as looking after the children. De Beauvoir claimed the jobs carried out by women are mostly repetitive and unproductive, “woman’s work within the home gives her no autonomy; it is not directly useful to the society; it does not open out on the future; it produces nothing” (De Beauvoir, 1953, p.442-443). For de Beauvoir, women with all their domestic responsibilities are subordinate, dependent, secondary and unproductive hence not autonomous. While women are occupied with household duties, according to de Beauvoir, men benefit from their responsibility to bring income to the household because they can perform self-realisation in work and action. Here, I found de Beauvoir’s account strongly based on economic benefit in which men’s engagement in paid labour is seen as enabling them to perform self-realisation, while women’s work at home is considered repetitive and unproductive as it counts as unpaid labour, making them secondary and not autonomous.

First, I would argue against de Beauvoir’s claims regarding domestic job as repetitive as many paid jobs are also repetitive, for example, assembly line work, but de Beauvoir does not criticise that, probably as it is a paid labour. Secondly, when de Beauvoir claims that the domestic space makes women subordinate, dependant, secondary and lacking in autonomy, this was based on her experience of living in the European/Western society. As Evans (1998) highlighted, de Beauvoir’s works did not discuss society outside Western Europe, as they mainly focus on the French bourgeois culture which was misogynist and denied women public agency. However, as a leading feminist thinker, her work has been read and has inspired many feminists’

works. *The Second Sex*, was a best seller in the Global North (Evans, 1998) and her words “One is not born but rather becomes, a woman” have been quoted either in academic works or popular articles all over the world, from the Global North to the Global South, and even chosen as an inspirational remark to celebrate International Women’s Day.²⁶ Thus, even though de Beauvoir was discussing French society at that time, her work has been read and used widely until today and inspired many feminist thinkers as well as the feminist movement even though it might not have been de Beauvoir’s aim for her work to be used to describe women’s experiences from many different backgrounds. I also do not say that de Beauvoir is entirely wrong about her argument, however, when she referred to women’s domestic tasks and responsibility making them secondary, lacking in autonomy and dependant, in some other cultures those responsibilities could be seen as positive for women. For example, the traditional matrifocal culture in Aceh positioned women as the house owner with many powers including the right to ask her husband to leave if she wanted to (see chapter 3). Thus, what de Beauvoir called domestic space, in the case of the matrifocal culture women had many powers to act as autonomous beings. Western feminists often use women’s experiences in the Global North as a standard for the experience of all women, which is often used to judge the freedom of women from the Global South. I would argue the definitions of freedom or agency need to be situated, and associating agency with paid work further marginalises any unpaid work associated with domestic space.

Debates about domestic and public space also needs to be re-contextualised. A house now could also be a workplace, while for others it is a space to gather with friends or to hold a public meeting. Hence, I would argue a house can no longer be seen merely as domestic space. This discussion will be elaborated further in the next section.

De Beauvoir also claimed women’s domestic role made her secondary. She claimed a woman’s “occupation makes her dependent upon husband and children; she is justified through them; but in their lives she is only an inessential intermediary” (De Beauvoir, 1953, p.443). She even believes that a woman’s decision to marry and

²⁶ See; <https://www.theguardian.com/books/1999/jun/06/classics.simonedebeauvoir>; <https://www.dnaindia.com/analysis/column-quite-clearly-the-second-sex-2727363>; <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/womens-day-quotes-images-wishes-messages-status-greeting-15-powerful-quotes-by-famous-authors-to-celebrate-international-womens-day/articleshow/68302831.cms>

become a mother is like selling herself into slavery (Patterson, 1986, p.87). Here I would like to highlight that the position of women and mothers in the context of Indonesia is distinct, in three main respects.

First, unlike in the majority Western countries, most ethnicities in Indonesia do not take the family name from the father or husband; there are only a few ethnicities, such as the Batak, with a family name, for example. Hence, one is not known because of their 'paternal name' or husband's name, but rather as the child of their parents, both mother and father. Therefore, a woman does not change her last name following marriage.²⁷ In general, there is no last name in Indonesian society, so most Indonesians have only one name.

Secondly, de Beauvoir's account does not apply to cultures with a matrifocal tradition, such as Aceh, as previously discussed (see chapter 3). Even though this tradition has changed in the present day, it is important to acknowledge the cultural relativity to avoid homogenising all women's experiences as the same.

Third, in Indonesia particularly in Muslim communities a mother is highly respected by their children even more than their father. There is a saying '*surga di telapak kaki ibu*' which literally means that 'heaven is underneath a mother's feet'. This saying is well known in Indonesia and even made into songs citing the words and asking people to be obedient to their mother. Some argue this saying comes from the Prophet Muhammad - '*al-jannatu tahta aqdam al-ummahat*' meaning 'heaven is underneath a mother's feet', while some others question the validity (Republika, 2019). Nevertheless, people believe that children must be respectful and devoted to their mother. They are expected to obey their mother and not be rebellious against her. Within Muslim society in Indonesia, we are often told a story about when someone asked the Prophet Muhammad who should be respected the most in this world, and the prophet says, "your mother" three times, and only after that he said, "your father".

²⁷ My mother for instance, did not change her name following marriage with my father, so her name is still the same as when she was born. Meanwhile, for me Desy Ayu Pirmasari is a full name in which Pirmasari is not my last name, neither name I inherit from my father whose name was only one word, Firmansyah. As I lived in my mother's town when I was born, people know me more as the daughter of my mother instead of my father, but when I moved to my father's town then people knew me more as the daughter of my father. So, one is known as the daughter or son of someone based on familiarity either with the father or the mother. A woman is often referred to as the mother of her oldest child for example, if the oldest child in the family is named Adriana, the mother would be called 'Mama Adriana' or 'Adriana's Mother', and the same applies to the father.

Additionally, there is much local folklore about *karma* or bad luck for not respecting one's mother. The most famous one is the story about Malin Kundang, a man who was condemned to be a stone after insulting his mother. Another famous is '*Batu Menangis*' or 'the Crying Stone', a story about a young woman who turned into stone after disrespecting her mother. Respect towards the mother can also be seen from '*sungkem*' culture in Javanese society and some other societies in Indonesia. The Indonesian dictionary defines '*sungkem*' as '*sujud (tanda bakti dan hormat)*' meaning prostration (a sign of devotion and respect),²⁸ to do this one is expected to bend one's knees and kiss the hand or knees of the elderly. The *sungkem* tradition is often held in some traditional ceremonies such as weddings and during the celebration of Eid Mubarak. People usually do *sungkem* to those they respect the most, particularly the elderly women in the family such as mother and grandmother (Cahyono, 2018).²⁹

As in many other societies including the Western hemisphere, In Indonesian society a woman is expected to be the main carer, 'the first school' for their children, their position is highly respected and they have their own autonomy to perform agency. As the main educator for the children, a mother is their first source of knowledge which they often refer to. During my fieldwork, I often hear people saying to me, 'my mother said...'. This was also mentioned by Snouck Hurgronje as well in his classical work on the Acehnese where he called women the "hereditary guardians of old-fashioned words and expressions". Many people he met would say they must refer to their wives or mothers to get answers for many questions he asked (Hurgronje, 1906a). In everyday life, people refer to their mother's advice, and arguing against a parent, particularly a mother, is very taboo or even seen as something that could lead to bad karma (see also: Kloos, 2018). This highlights women's position in a more positive light within Indonesian culture.

These above concepts of agency from the World Bank and de Beauvoir were unhelpful for my context. So now, I will move on to some more helpful notions of agency. McNay (2000, p.10) defined it as "the capacity for autonomous action in the face of often overwhelming cultural sanctions and cultural inequalities". Here, McNay

²⁸ <https://kbbi.web.id/sungkem>

²⁹ Cahyono highlights five meaning of *sungkem*: 1) it symbolised respect; 2) devotion; 3) a way of saying thank you; 4) asking for pardon and; 5) pleading. He emphasised in wedding ceremony *sungkem* represent devotion of the children towards their parents, a way of saying thank you for raising them as well as a moment to ask for the parents bless for their marriage life, so their married also blessed by God.

does not talk about resistance but places more emphasis on one's autonomous acts, whereas Isaacs (2002, p.129), for example, describes agency as women's ability to be effective agents to resist sexist oppression. For Isaacs, the moral agent should be independent, in-control, rational and have many different options as well as the right to choose from all alternatives. Isaacs (2002) claimed women's agency is sometimes burdened by feminine socialisation which encourages women to be passive, maternal and nurturing, which makes women dependant and lack control over their own life. Another account that describes agency as a form of resistance is one by Linda Arthur (1998) who conducted ethnographic fieldwork in the Holdeman Mennonite community. Arthur investigated how women resisted the social control of their bodies. Her works highlight how Mennonite women perform their agency by resisting control regarding their appearance, such as by secretly wearing 'worldly' outfits at school and make-up which were strictly controlled in the society. According to Arthur (1998) the united actions of Mennonite women have brought some changes in women's dress code.

Some scholars criticise defining agency merely as acts of resistance. According to Mahmood (2005, p.5) this view is typically based on "normative liberal assumptions" which believe that human beings naturally demand freedom and seek autonomy. According to Bracke (2008, p.63) Mahmood's concept of agency does not only see it as an act of resistance against the traditions, but she considers a multivariety of ways where the norm is resisted and consummated. Mahmood (2005), analysed different modalities of agency performed by women mosque participants in Egypt. She highlights some practices in which women's attachment to the patriarchal traditions do not only make them into subordinate subjects but also enable them to perform their agency. Here, I would like to follow Mahmood to challenge the normative liberal assumptions of women's agency. I agree that agency sometimes takes the form of resistance against the norms, however, by defining agency only from this perspective we might have ignored any other forms of agency performed by women, which shaped and re-shaped the norms in the society. Additionally, seeing agency solely as form of resistance within religious communities would only perpetuate the idea that religion is oppressive, particularly Islam in this research, with women as its main victims; and at the same time would further demonise Muslim men. As Mahmood (2009) said, such a view only perpetuates prejudices, stereotypes of Islam and legitimises Islamophobia in Europe today, or other mostly non-Muslim

countries. Here, I would like to propose that agency should not merely be seen as an act against oppression. Like Mahmood, I want to highlight multiple forms of agency, including any effort to negotiate identities in order to gain desired outcomes. Thus, this chapter could be a contribution to the debates about the concept of agency in subaltern studies.

6.2 Women and the Veil

Banda Aceh, 10 October 2016 (field notes)

I arrived at Laila's house in the afternoon, she wore a veil and a long loose-fitted dress like an abaya. She lives with her mother and her sisters. Her mother and one of her sisters was wearing a veil and the same kind of dress as her, and her other sister was wearing a niqab. Even though I was just wearing a scarf that I put on my head which sometimes fell to my shoulder, I did not feel judged by them regarding my appearance.

When I was at her house, one of her cousins Ainah came, she was wearing trousers, a shirt and a veil. Ainah said to me she had just started wearing a veil, not because she was scared of the shari'a police, even though she had been caught in a dress raid twice, but because she got *hidayah* or had been 'enlightened'. She told me about her experiences of being caught in a raid twice for not wearing a veil. She is now veiled, she says she has '*sudah mendapat hidayah*' or 'already got enlightenment', but she disagrees with the government's way of forcing people to veil. She described her experiences of being caught during a dress raid for the second time. One of the male officers warned her and other people caught that time if they were found not wearing a veil once again in the future, he would send them to jail. Not long after that the officer realised, she had been caught before and this was her second time and he ran at her shouting "if I got you once again, I will put you in jail". Ainah replied "up to you, please put me in jail" and then she just left.

Like her cousin Ainah, Laila also disagrees with the veil obligation imposed by the government. She said '*hidayah* will come by itself to people, not by force from the government'. She regretted the application of shari'a in Aceh today which she thinks only regulates people's morality. Laila said "the government is supposed to be focused on providing support which will attract people to be pious, like providing good praying facilities. It includes providing enough water for people to do ablutions, clean toilet facilities in mosques many of which are really dirty now as well as make people feel safe (so) people feel safe to pray".

Ainah's case demonstrates various forms of agency, one is when she resisted the authorities who conducted the dress raids, while the other one is regarding her decision to veil after she considered she had already got *hidayah*. For many people,

Ainah's decision to veil might be seen as an act of giving up and acceptance towards obligations imposed on her body through the local *shari'a*. However, as she emphasises that her decision was made because she had already got *hidayah*, God's guidance that many people do not get. *Hidayah* means a guide or guidance from God.³⁰ God only gives *hidayah* to some people so they become more pious. However, this term is often overused, as it sometimes only refers to when one starts doing things that are considered better, such as veiling. In Aceh, as well as Indonesian society in general, veiling is often seen as better, an expression of piety, and a positive change when a woman decides to wear one. On the other hand, a decision to unveil would be seen as a sin and could lead to bullying and harassment, as was the case of some Indonesian celebrities who were praised when they said they had received *hidayah* when they veiled and bullied when they removed the veil (Surya, 28.04.2017). Here, the concept of *hidayah* is similar to what Brenner (1996) called awareness (*kesadaran*) which is the central motives within the narratives of veiled women and Islam. In her works which focus on veiling and women in Java, Indonesia, Brenner highlighted how this awareness about veiling comes to women through various ways, from attending Islamic classes, reading religious books, and discussion with friends and others who try to convince them to veil. These processes build their awareness as Muslims to be a better person and closer to God, and veiling is believed as one way to do so.

In Ainah's case, her choices to veil were driven by her will to submit to God as she claimed she had already received *hidayah*. She said she did not wear a veil because of the pressure from the government's regulations nor the dress raids in which she had been caught twice. She said her choice to veil was made freely, thus she acted autonomously regarding her public appearance. Even though her decision to veil might have been influenced by the norms in the society, Ainah said she had made her choice as she wanted to be more devoted to God.

I imagine Ainah's decision is like someone's who decided to wear sneakers as part of their identity. In such a situation, we often think that style is a way to perform agency, a decision made autonomously without any pressure from society or the environment. We rarely see them as victims of some specific sneaker brand, fashion trend or social pressure they belong to. For many of us, such a view is more familiar

³⁰ See: <https://kbbi.web.id/hidayah>

and part of our everyday life, while those wearing other kinds of outfit either veil, burqa, or niqab may look foreign or strange. Thus, situating and locating the context of agency become important, so we can understand and appreciate one's choice or decision.

For many people in Indonesia, the veil represents piety and public participation (Smith-Hefner, 2007). Like Ainah, many people I met in Aceh associated their decision to veil with piety, a decision made as they had already got *hidayah* or because they wanted to be a better more pious person. Like her cousin, Ainah, Laila also believed in the concept of *hidayah* but had particular views as can be seen from the field notes above. She believed that awareness should come from within one's heart not by force, religious education was not only to educate people's religiosity but also force a change in their behaviour.

Like Laila and Ainah, many women I met when I was in Aceh stated they actually agreed with *shari'a* which they believed as God's law to live in this world; indeed, for a devoted Muslim, opposing *shari'a* could be seen as an act of disbelief. However, many people I met disagreed with the codification of *shari'a* as law, enforced by the government and often only focusing on regulating people's public appearance as well as their morality. Some do not hesitate to argue against the apparatus when being caught in dress raids. I met Tina who later on introduced me to her close friends, Masyitah and Fatimah. All of them have experienced being caught in dress raids. Tina and Masyitah did not wear veils during my fieldwork time, while Fatimah has decided to wear one, a decision she said because she wanted to be a better person and at the same time because the veil has become a fashion trend.

Fatimah told me her experiences of being caught by the WH in the past, for not wearing veil and wearing a tight outfit. She was with her other friend in a street food store when a few cars and vans with many officers arrived. Like Ainah's story earlier, when she was caught she did not just stay silent, instead she argued against the *shari'a* police and even lied to them about her name. "I was 'in war' with the WH, I hate them and I was once caught [before] for not veiling and [for] wearing tight clothes" Fatimah explained. She then managed to escape when the officers were busy with other people. She described how the WH officers were arrogant and rude which gave her no respect towards them. She said their attitude back then made her reluctant to veil. Her decision now was driven by self-awareness to be better, which she also referred to as getting *hidayah*, although she admitted that the growth of modest

fashion has also affected her decision, reason that was also admitted by some other women I met during my time in Aceh. In the last decade, the veil in Indonesia has been transformed not only to symbolise religious or social activism but also as fashion trend. According to the *State of the Global Islamic Economy* report 2017/2018, Muslim clothing consumption in Indonesia reached US\$13.5 billion, which makes it the fifth largest in the world (Thomson Reuters, 2017). In 2018/2019, it rose to US\$20 billion, making it the third largest in the world behind Turkey and the United Arab Emirates (Thomson Reuters, 2018). The Indonesian government also targets Indonesia to be the global Muslim fashion capital by 2020 (ANTARA, 06.05.2019). Thus, like other industries Muslim fashion has also been influenced by the capitalist market and global trends.

Even though Fatimah had decided to veil, Tina and Masyitah continued to be unveiled until the time I left Aceh in 2017, even though recently I saw Tina wearing a *kerudung* (a type of veil worn like a scarf) in some recent pictures she had posted on her social media. Both Tina and Masyitah said they always argue against the WH officers when being caught. Masyitah even told one who grabbed her hands, saying, “You said you reinforce *shari’a* law, but look what you do to me, it is forbidden for you to touch me in Islam as you are not my *muhrim*”. She did not stop there, she also rebuked another officer who told a fat woman not to wear tight clothes. She told the officer, “It’s not her fault though, most clothes will be tight for her because she is big, so how can you expect her to wear loose-fitting clothes, what kind of clothes [do] you mean?”. The officers finally let Masyitah off without saying anything else about her outfit.

Both Tina and Masyitah have shown the acts of resistance against control and reinforcement conducted by WH officers regarding their public appearance. They also refuse to obey the curfew regulations, enforced by the city mayor of Banda Aceh which forbids women to be outside the house after 11 p.m., as they often took me to a coffee shop beyond this time. Tina and Masyitah are examples of those who perform their agency by ignoring the regulations and resisting the government officers when caught for not following the order. This kind of agency which is associated with acts of resistance, is probably more common among liberal feminists, as was the case of women in the Mennonite community mentioned early in this chapter (see Arthur, 1998). However here, I would like to emphasise, the resistance act is only one out of many different varieties of agency by women in Aceh. Their resistance acts posed

different image of Muslim women who are often portrayed as submissive and controlled by their male patriarchy and religion. Their resistance here could be borne out of their knowledge of some religious narrative or lack of faith in the *shari'a* police's credibility as legitimate enforcers. The WH are often criticised for being arrogant, rude, and discriminative as many of those being caught or told off are women from lower socio-economic groups (see Human Rights Watch, 2010a). In 2009 a female detainee, accused of being together with her boyfriend, was gang-raped by WH officers at the *Shari'a* Police stations (Human Rights Watch, 2010b). Two of the three officers received eight year jail-sentences.

In the case of Aceh, even though women are required by law to wear the veil many people wear this attire for different reasons: piety, as a fashion accessory or as part of their identity. Alia, for instance, a mother of one who works in the educational field told me that the veil is part of her identity.

I was studying at a *pesantren* (Islamic boarding school), so the veil has been my identity since I was a child. So, it cannot be separated from me. I agree that in Islam there are many different interpretations about the veil, one said it's to cover the aurat while others do not consider it is the aurat that need to be covered. However, for me it is part of my identity, if I do not wear it, it does not feel like me.

A *pesantren*, known as a *dayah* in Aceh, is a traditional sex segregated Islamic boarding school in which the main curriculum is Islamic studies, from reciting the Quran and as well as reading religious textbooks, known as *kitab kuning* which are written by Islamic scholars, often in Malay Arabic. As described by Smith-Hefner (2007, p.14) the veil is part of the uniform at *pesantren*, and it has become their "comfortable identity". After finishing her study at the *dayah*, Alia could have taken off her veil if she had wanted to, however, she feels it has become part of her. For Alia, there was no restriction and specific rules regarding the veil they used when she was at the *pesantren*. She even said, "my female religious teacher who was the leader at the *pesantren*, just wore some sort of headscarf as her veil where you could see her ears and hair". For Alia, in the past, people acknowledged fluidity in interpreting religious texts instead of forcing them to take a homogenous viewpoint.

"People should be left to make their own choice. Even if they want to wear a veil or not, because individual piety is a personal relationship between one with God, it is not supposed to be forced by the state. So, when the

state gets involved in increasing someone's piety, in my opinion they have taken God's role to discipline the religious believer". (Alia)

Here, Alia linked the veil and piety as well, however, like Ainah and Laila, she considers it as a personal relationship between God and a human being. Again, it could be linked to the concept of *hidayah*, guidance from God to those God chooses so no one can force it, including the state. Alia even emphasised that the forced veiling regulations were only a symbolic action to make the government look Islamic. Alia and the three other women Ainah, Laila, Fatimah are only a few of probably many more women in Aceh who wore the veil but disagree with government regulations to force women to do so.

Veiling regulations are part of government policy at the national and regional level. As the relationship between the two were not always harmonious, veiling could also symbolise a political move or solidarity. During President Soeharto's time, or the New Order regime for example, the government imposed anti-Islam policies, such as banning the veil until 1991 (Smith-Hefner, 2007). This caused women who wore the veil to face many threats and discrimination, from getting their veil pulled to being threatened with not being given their high school certificate (Adriany et al., 2017). For some others, veiling could also hinder them from getting a job or promotion at work (see. Brenner, 1996). As a result, the veil was later used as a symbol of anti-government solidarity (Smith-Hefner, 2007). Thus, veiling cannot be seen merely as an act of submission or being oppressed, even in a region where *shari'a* requires women to wear one.

All the women I mentioned above shared the same value, that is they believe in God, and being a pious person is one of their duties in this world. They also believe it is their responsibility as Muslims to uphold *shari'a*, however they disagree with the formalisation or codification of *shari'a* by the state, which they claim ends up only focusing on people's morality and eliminating the diversity in religious interpretation. They believe piety should come from within one's heart, not from an outside force such as the state rules. In a case like Ainah, for example, we need to understand how she values her faith or religion and her aim in this world. Some people aim for material wealth but others believe in the afterlife and that their life in this world is only temporary. Hence, obeying religious belief is a self-fulfilment and being pious is one of their main goals in life to prepare themselves for the afterlife.

Age is also a factor in people's religiosity. In traditional Islamic teaching in Indonesia, after the age of 63, the age when the Prophet Muhammad died, life is a bonus so we need to be more pious and get closer to God to prepare for the afterlife. In some parts of the world, religion is seen as way of life and something fundamental for people's existence while in other parts of the world it is seen as something irrational that should be left behind. These differences should be respected. Even though people's faith is often manipulated by others to maintain power and domination over them, neglecting people's freedom to perform their religious belief, we not only homogenise and standardise the view about women's freedom but we also deny their agency to choose what they believe in.

In this section, I elaborated women's different reasons for their choice to veil. They should not be subjugated by government obligations to wear a particular style of Islamic dress. Women perform their agency in many different ways that should not be homogenised as one form of resistance only.

6.3 Between Domestic and Public Space: Adopting and Challenging the Norms

Field notes, 17 December 2016

It was Mid December 2016, Alia asked me to meet up in a coffee shop nearby from where I live. The coffee shop is always busy at most times of the day, but this is one of our most favourite places to meet up as the location is easy to reach for me as I do not have motor bike or car to travel around. When I arrived at the café, Alia was already there with her son and husband whom I have met a couple of times before. Her husband is normally busy doing some other things so is her son, which make me and Alia often busy talking about anything as well. This time I showed Alia some photos of a banner I took when I visited Lhokseumawe, including one with a picture of Aceh's national heroine Cut Nyak Meuthia, who did not wear a veil. Suddenly her son responded by telling us when he and his school friends visited the Museum of Cut Nyak Dhien, they were told her picture that is often shown in public not wearing a veil, like picture I was showing, is not correct as she was actually veiled. He said the museum officer told them that the picture was the Dutch way to degrade Cut Nyak Dhien. Alia was shocked with her son's story and she told me this is the first time she heard about this from him. She then told her son, "OK, next time we go to the museum again and look for the truth and [we'll] also read more books about it".

Alia then told me that in the past she decided to withdraw her son from public school and chose to teach him by herself. She said one day, her son come back home from school crying and said to her that God is cruel. She asked him why? He told her about his day at school, the teacher told them

about the story of Noah and his ship and how God drowned people who do not believe in Noah and his God. He said to her “it’s really cruel, God drowned them and let them die, they could not breathe”. Alia then decided to teach him at home because she thinks she needs to give him religious lesson by herself.

Alia’s story above reminds me of de Beauvoir’s views that women’s decision to marry and have children is like putting themselves into slavery (see Patterson, 1986). De Beauvoir always emphasises women’s roles and responsibilities in the domestic space, which she argued, makes them not autonomous beings. In chapter 3, I discussed the transformation of matrifocal culture in Aceh due to dynamics in the national government policies. It was under the New Order regime (1967-1998) the government implemented what Suryakusuma (2011) called as state ibuism in which a woman was expected to be a good and obedient companion for her husband, a mother and educator for their children as well as a housekeeper. In addition to this, women’s roles in Muslim societies are often associated with domestic space while men’s with public space (BBC, n.d). Women in the Global South or Muslim societies are often portrayed as helpless, subjugated and victims of their eternal male and religious patriarchy and in need of being liberated from the domestic space where they were kept by their men. The aforementioned speech delivered by Laura Bush and the narrative of veil during the colonial era mentioned early in this chapter, represent this view. Thus, in this section I would like to highlight the experiences of some women I met during my fieldwork of how they empower their roles as mothers who are often considered as the one responsible to look after, nurture and educate their children.

During my fieldwork, I often spend time with Alia, as mentioned above, a mother of one who is also a full time educator in Banda Aceh. After meeting her a few times I found out that she and some other women often organise training and activities for their children. For example, with the help of Laila, they organise training to teach the children about writing which encourages them to write fictional or real life stories. They also asked me to join teach their children especially as I had experience as a journalist. They often invited me when they gathered to meet up either in a coffee shop or park. In every gathering they discussed activities or additional lessons they could give to their children.

My relationship with Alia and her friends brought me to an understanding of how they empower gender expectation regarding women’s roles as mothers. On one

occasion, Alia said, “for me religious education is really important and it should not be coercive as well”. She recalled an event with her son:

“Once we went to Peunayong, it is an area where there are many Chinese (descendants), suddenly he told me ‘Mother, there are many people open their aurat here’. That’s when he was at Kindergarten. ‘many women exposed their aurat, they must be go to hell’. My goodness! I thought this is a ‘disaster’. Finally, I explained to him that it is God’s rights to decide who will go to heaven or hell, we should not get involved, instead we should respect their choice”.

Alia thought the region seems to have become more homogenised, hence she was worried that her son would not be able to accept diversities. After hearing her son’s comments about the veil, Alia then chose to educate him at home. She talked more to him and even took him to meet some friends who are transgender. “He talked to my transgender friends and when I have some friends from abroad coming I introduced him to them, including to those who do not veil”. Alia did not only introduce values that often contradict the local norms, but she also brings fluidity to the concept of public and domestic space as she then teaches her child either at home or in a public area such as when meeting friends. One day, Alia and her husband took their child to the museum of Cut Nyak Dhien, to find out the story of her veil as mentioned earlier. The public domain is a place for her to nurture and educate her child, responsibilities which are often described as ‘domestic’ tasks.

After a few years, Alia decided to send her child back to school, but she said this time she picked a school where he could meet people from many different backgrounds, Muslim and Non-Muslim, where women wear the veil, burqa or none, which she considers as the best way to introduce diversity. She always emphasised that God is kind, God is merciful and not cruel or a punisher. This way, Alia also defies the dominant narrative in the region, in which Islam is often associated with punishment, and the only way people get mercy is by being punished.

Alia’s decision showed her autonomous being as a mother in her choices to educate her son. Her decision was determined by her desire to internalise diverse values in a society that she considers is getting more homogenised. In a society like Indonesia where the mother’s word is sacred to their children, teaching her son gave Alia more opportunity to counter the homogenising narrative. Alia carried out gender

roles expectations as a mother by educating her child, but at the same time she also challenged the dominant narrative in the society.

Alia has empowered different modalities of agency, she inhabited local norms and moral principles as a mother, however her action also gave an opportunity for change particularly through education. Her decision might be seen as acceptance of the dominant narrative of women as the one responsible to nurture and educate the children, but in performing this expectation Alia has shown that through embodiment of certain values, one can internalise other values that could destabilise the norms. By introducing her child to the transgender community, she challenged the norms that do not recognise them and even consider them as a deviance that needs to be normalised (see chapter 4). “I told my child that we live in diversity so we have to respect the heterogeneity”. As she spent more time with her child she was also able to give him more knowledge which will affect the way he views the world. Thus, I would argue nurturing and educating children is not a repetitive job where women have no autonomy. The concept of domestic and public space also becomes fluid when educating children as Alia and her friends often do it both in a house or the public arena such as a park.

The fluidity of space can also be seen from Sila’s story, a woman who challenges the masculine domination in a customary institution known as a *Tuha Peut*. *Tuha Peut* or village council is a customary law or *adat* institution, one of its main responsibilities is resolving disputes.³¹ A report by UNDP Indonesia (2011, p.34) about the community based justice system in Aceh describes *Tua Peut* as:

a complementary body within a *gampong* or *mukim* whose members represent government officials, religious figures, adat leaders, and scholars of the gampong or mukim who act as advisers to the *Geuchik* and *Imeum Mukim* on governance, adat law, community customs and tradition; they also settle disputes in the *gampong* and *mukim*.

According to *Qanun* No.9/2008 *Tuha Peut*, the *Keuchik* (village head); *imeum meunasah* (village mosque leader); *gampong* secretary; clerics, *adat* leaders and scholars from the relevant *gampong*, and others when necessary, are *adat* justice practitioners who have rights to resolve 18 forms of common local level disputes at the *gampong* level, such as petty theft, domestic disputes between families, physical conflicts, and some other disputes breaching local traditional culture.

³¹ *Qanun* Aceh Nomor 10 Tahun 2008 tentang Lembaga Adat

In the past, *Tuha Peut* was very male dominated and had no women members, hence, women encountered much resistance from various bodies and people in the society when they tried to join in (BRR NAD–NIAS, 2009). It happened to Sila, a woman I met during my fieldwork in Aceh who challenged the masculine hegemony by getting into the structure. When she first proposed the idea to join in the structure of *Tuha Peut*, she got much criticism and many rejections. Her husband was also worried that it might get her in trouble, however she insisted on challenging the institution as well as the society to give her an opportunity to get involved. She said when confronted with all local traditional leaders she just smiled and responded to them:

“I want to join in the structure, not because I want women to be imam (leader), men are the leaders for us women, who stand in front of us. When women are involved in the structure, it does not mean to replace men, women become imam, No. But when we are placed in the structure, please let us women learn together with the men (...) Why do we want to learn? Because we never have space, no place for us to learn, so women are not clever. What is the result when women are not clever? A woman is the first mother (parent), when a baby boy or girl is born, the first one they see is the mother. So, if a mother is not clever, what can we expect from the (next) generation?” (Sila, *Tuha Peut* member)

Many might argue that her decision to join might be seen as an acceptance of the patriarchal hegemony and social injustice. However, at the same time it gives her a chance to be heard and negotiate women’s position. Her move to get into the structure provides her with many opportunities to challenge male domination and at the same time engage men in gender equality practice. By working together with men, Sila is promoting equality in her own way. She is negotiating her position as women within the patriarchal structure. By learning together with the men, she is challenging the dominant hegemony to get women into the same position as men. Without acknowledging men as her *imam*, Sila might never have been accepted into the customary institution. By doing this it not only allows her to be part of the institution that was only dominated by men, she is now also able to ask for more women’s involvement.

Sila’s position in *Tuha Peut*, gives her authority to help people in her society to deal with some problems. At the beginning, she said she had to be proactive in approaching people in the neighbourhood she is responsible for so they would be willing to tell her if they have a problem at home such as domestic violence. In the

past, she said many women were reluctant to share such a story outside the home. Hence, many ended up only telling their mother who would justify the abuse and tell them to be patient.

“I told them it is an old habit, probably during our mothers’ time... the problem is that it is not a good habit, I said. For example, a husband hits us, hurts us, and we accept it. Why? Because our parents are still together until today and they experienced it as well in the past. They got their back rubbed and were told to be patient, ‘that’s why I never tell the story’ they said. Because when I tell my mother, she said she experienced that as well in the past, but she is still together with her father until today without a problem. So why nowadays you cry and make it a problem?... (I told them) we should never experience it anymore, at least if it happens to our parents, it should not happen to us, and our children have better experiences. (Sila, Tuha Peut member)

At the beginning of her involvement in Tuha Peut, she approached people, particularly women, to share their problem or disputes they faced in order to find a solution in a peaceful way. Now she said, it is not only women who come to her to discuss their problem but also men and give the woman’s perspective. One man came and told her “Bu (Ma’am), can you believe that yesterday when I came home, my wife had not cooked rice yet?”. She responded by saying,

“probably your children were crying, having fever after immunisation which is common, so the mother fell asleep as she had not slept all night, so [that is why] when you came home she has not cooked rice yet’. You need to be patient”. (Sila, Tuha Peut member)

Sila emphasises that the household belongs to the husband and wife, hence they need to share all the responsibilities. “Usually I talk to them while joking, not that seriously so they feel comfortable and do not feel like I am teaching them. Hence, they normally respond by laughing but also agreeing at the same time”. Sila said she always reminds people when their marriage was solemnised, they agreed to build the family together. By doing this, she tries to engage men in gender equality and eliminate the gendered division of domestic and public space. She invites men to get involved in domestic responsibilities which are usually only held by women and also invites more women to get involved in public and social activities for their own and others’ benefit.

Sila both confirms the patriarchal domination and destabilises the patriarchal tradition when accepting men as leaders but also joining the traditionally male

organisation. She invites men to participate in the domestic space and women to get involved in some public activities. In performing her roles, Sila has also made the gendered public/domestic space more fluid by using her home as a meeting place for advising people.

6.4 Conclusion

This chapter tried to challenge narratives about women living in the Global South and under Islam, which often portray them as one single category that is subordinated, domesticated and victims of male and religious patriarchy. Within this category women are perceived of having no autonomy to perform agency, thus need to be rescued.

In this chapter, I highlighted that the effects of the application of *shari'a* law are different for women than for men. There are mixed opinions about the way the government is upholding *shari'a* law in Aceh, and also about the Western narrative, in which women are perceived as having no autonomy and unable to perform their agency.

However, I found Mahmood's concept of agency the most helpful to analyse a society which has a strong Islamic background, like Aceh, and to elaborate how women negotiate their position to perform agency in a strong patriarchal context, as observed during my fieldwork. Her works also acknowledged multiple forms of women's agency not only in the form of resistance, hence her conception is helpful to explain the range of ways women in Aceh perform agency. Agency is performed in many other ways: from the adoption of local culture which provides women a space to follow the traditions but at the same time this space for change also destabilises the norms. Women's acts, as discussed in this chapter, have contributed to destabilising, constructing and reconstructing the norms. In this chapter I highlighted three different cases, the first one regarding women's decision to veil or not, the second was about women's responsibility to educate their children about heterogeneity and the third was about women's negotiated entry into a male dominated customary institution.

Some women perform their agency by resisting the *shari'a* police during the veil raid. By doing this, they create a different image of Muslim women under *shari'a*, not only that they reject the obligation imposed on them but they also manage to get themselves out of the sanction. On the other hand, this chapter has also shown that

women wear the veil for many different reasons. Some consider it as part of their identity while for others, veiling is seen as the act of piety, a spiritual gain to be a better person, thus wearing it often makes a woman feel that she has made progress to becoming more pious. This kind of decision is driven by faith and spiritual belief that the life in this world is only temporary and the afterlife is permanent, thus one needs piety to get a better place in the afterlife. Unveiling, for them is not a symbol of liberation or freedom from oppression. I would argue feminism should also mean giving any woman their right to wear anything they like even if it means covering themselves which is often seen as a symbol of oppression in the Western societies.

Adopting women's responsibilities as a mother to educate her children, Alia decided to withdraw her child from state school and teach him amidst the current dominant narrative in the society which is getting more homogenised. By doing this she wanted to internalise religious values regarding diversity to her child. With some other friends who are also mothers, Alia organised training and activities for their children. Her role as a mother who is expected to nurture and teach her children, provides her with an opportunity to choose what kind of education and values she could give to them. Alia's case also demonstrated the concept of domestic and public space becoming fluid. Nurturing children is often associated with the domestic space yet sometimes it took place in the public space.

The chapter has also demonstrated that acceptance and confirmation of the patriarchal culture can provide space for women to perform agency which subsequently shapes and constructs the norms. Sila's acceptance of men as *imam* for women affirms men's role as leaders, however her negotiation allowed her and many other women to get into a strategic structure in the customary institution which used to be only dominated by men. Her negotiation made her voice heard, not only to provide more positions for women within the structure and many other public activities but also to negotiate husbands and wives' roles regarding domestic tasks. Sila has engaged men to support her goals of promoting women to be more active and involved in public institutions. Through her role, she also shaped and re-shaped the concept of domestic and public space to be more fluid in which the domestic and public space is not exclusively for women or men.

In this chapter, I have highlighted how agency should be understood in many different forms and situated as well as located in a specific time, place and context. I also would argue it is important to engage men to promote gender equality so gender

programmes would not be seen as only for women. This kind of narrative would eliminate resistance to gender programmes which are often seen as a ‘Western product’ and only for the benefit of women (see chapter 3). In addition, following Mahmood, localising, contextualising and situating the concept of agency would allow us to understand how women challenge dominant narratives in their society and how they contribute to the shaping/re-shaping of norms.

Chapter 7. Conclusion

This thesis provides an ethnography based research study regarding the application of *shari'a* in Aceh, Indonesia. I analysed local *shari'a* regulations as well as the discursive practices in everyday life. The practice of *shari'a* in Aceh has changed through time. This research found the codification of *shari'a* has homogenised religious text interpretation which created a discourse of a homogenous society. Limiting religious text interpretation into only a single exegesis does not only eliminate diversity of opinions, which has been the very nature of religious knowledge, but could also lead to discrimination, marginalisation and exclusion of some people or groups. The government, through the law, exercises power which has recreated the society's identity as well as impacted on people's bodies through all the regulations and punishment. To conclude, at least there are four main characteristics of the contemporary practice of *shari'a*: 1) the government or the state is the single authority to interpret religious text and transform it into law; 2) the codification of religious text into written law has homogenised religious text interpretation and eliminated the diversity which was the very nature of *shari'a*; 3) the modern day practice involves the institutionalisation of *shari'a* in which government apparatus, such as the WH, has been established to ensure the implementation and monitoring of *shari'a* practice in everyday life and; 4) *hudud* (punishment) is the character of contemporary *shari'a*. This is not only in the form of corporal punishment but also public punishment, which has brought physical and psychological pain to the accused (see chapter 5).

This thesis is informed by post-colonial theory. Women in the Global South and the Muslim community are often portrayed as victims of the patriarchal culture within the society or the religion in particular Islam (see chapters 1 and 6). According to Mohanty (2003) Western discursive representation of women in the Global South often universalises women's experiences, and portrays them as an oppressed group, victimised and backward. By saying this, I wanted to highlight my position as an Indonesian Muslim woman who had studied in a Western Institution, examining the application of Islamic Law in Aceh. This positions me as an authentic insider (Narayan, 1997) (see chapter 1). Thus, this research aims to be an authentic insider piece of work by a Muslim woman from Indonesia, studying gender and Islamic law,

that engaged with local values and at the same time critical about the discursive practice and application of *shari'a*.

Having said that, this research is informed by feminist postcolonial theory which allowed me to see the colonial legacy within the practice of *shari'a* in Aceh. Dutch colonialism and Islam in Indonesia never had a harmonious relationship, as Islam was used as one of the main narratives in fighting against the colonial empire. Colonialism transformed many aspects of people's lives: the culture, governmental system as well as local judicial system including Islamic law.

This thesis demonstrated that some regulations within the implementation of Islamic law in Aceh echo the colonial policy during Dutch occupation. Even though stronger Islamic identity often claims to counter western values, this thesis highlights how the law is actually mirroring Western values brought during colonial times (see chapter 4 about night labour and chapter 5 about modernisation of the legal system). Thus, this thesis is also a contribution to postcolonial studies, the Dutch colonial legacy in the Indonesian judicial system, particularly Islamic law.

This research also highlighted various experiences of women under strict regulations that try to control their body and limit their mobility. It explored how the discursive practice of the application of *shari'a* has preserved and maintained control over women's bodies, particularly regarding public appearance. It is also demonstrated how women negotiate their position within this discourse and find space to perform their agency.

This chapter provides the summary of the research findings and conclusion. This chapter is divided into three sections. The first section revisits the research questions and the research findings. The second section highlights the use of CDA and CGT in this study and its potential for future study, the significance of the study and its contribution to existing studies about Islamic Law, gender and Islam, as well as Southeast Asian studies. The last section discusses about limitations of the Research and recommendations for future research.

7.1 Revisiting Research Questions

In this section, I will revisit the three research questions addressed in this thesis:

1. How is gender ideology constructed within local *Shari'a* law in Aceh? a) How should men and women behave under local *Shari'a*; b) How is *shari'a*

practiced within the society?

Women's gender roles and expectation have been transformed through time due to various factors including government policy, the prolonged conflict and tsunami disaster as well as the implementation of *shari'a* itself. Before elaborating the construction of gender ideology within Aceh's *shari'a*, it is important to understand that the state or other political interventions have constructed and reconstructed gender ideology in Aceh over time.

Regulations either from the central government under the New Order regime or the local government in the name of upholding *shari'a*, have been strong forces in shaping gender discourse in everyday life. Here I will elaborate the transformation of gender expectations towards women in Aceh.

Within traditional Aceh culture, women had a greater rights and roles through the indigenous practice of matrifocality (chapter 3). Under the New Order regime in Indonesia (1966-1998), the government gender ideology policy transformed the practice of matrifocality and also brought the dominant hegemony of Javanese culture to the whole society in Indonesia. At the same time, it highlights the state's policy to manifest the nation's identity through women's body and its attempt to impose cultural uniformity onto them through the declaration of the *kebaya* as national dress

After the New Order regime ended, the state/political intervention which affected the construction of gender ideology continued in Aceh, following the official implementation and the beginning of the codification of *shari'a* in 2002. The government established some institutions to ensure people uphold the *shari'a* in everyday life, and also actively promotes *shari'a* values through public advertisements and banners requiring people's engagement in upholding what is claimed as God's law. Thus, the government has extended its power through the discursive practice of the application of *shari'a* in everyday life.

This research found that local codified *shari'a* regulates people in various ways (chapter 4). The state (in this case Aceh's government) has set a unified standard of how people, men and women should behave in public space or even in private space. The standard which is represented in local codified *shari'a* regulates women more than men, especially on their public appearance and mobility. This thesis suggests that women's dress has become a signifier of power relations. Aceh's government imposes its identity as a region that has implemented Islamic law.

Women's bodies and public appearance is marked to express the society's collective identity, an important landmark that distinguishes it from another. Women are marked as a symbol of collective identity which represents the society's honour (Yuval-Davis, 1997), thus controlling and regulating women's body means protecting the society's values and integrity (see chapter 1). At the same time within the discursive practice of *shari'a*, women's dress and veil are claimed as religious obligations. Hence, women's bodies are marked as the burden of the society, the nation as well as the religion. Women's public appearance that does not conform with the standard could be seen as an anomaly, a deviance from the norms and standard.

Within the discursive practice of the application of *shari'a* in everyday life, women's dress also determines spaces they can and cannot go as well as people's attitude towards them. The narrative about *shari'a* as God's law that needs to be enacted and supported by every Muslim is always being reinforced in everyday life, either through various banners and posters in public space or religious sermons. It has attracted people's engagement with the implementation of *shari'a* as well as supporting it in various ways, including by conducting vigilante acts, such as run a dress raids on public roads, 'policing' people's behaviour including raiding people's house, and placing banners that restrict women's access to mosques due to their public appearance. Using *shari'a* law as the justification, many groups have used mosques and other places to extend their power over others, particularly women. Many of these acts highlight aggressive behaviour associated with masculine hegemony and this perpetuates social domination of men over women and other men who are considered as breaching the laws, such as *khalwath*, *ikhtilath*, *zina*, or homosexuality (*musahaqah* and *liwath*) (chapter 4). This discursive practice marginalises women as well as men who do not conform to the expectations. Thus, hegemonic masculinity within this context is not only about domination and control by men over women, but also by men over men.

The Aceh government's gender ideology also restricts women's mobility in public space as well as extends gender stereotype regarding women's modesty. Women are expected to cover up according to the standard regulated by the government under *shari'a* regulations by wearing a veil and loose-fitting dress. Those who do not meet the standard are targeted during official 'dress raids' by the government authority the WH, as well as those by the aforementioned vigilante groups. The government also tries to limit women's mobility through GI no.

02/INSTR/2014 about policing cafe and internet services in Aceh, CMI no.1/2015 and its revision version CMI no.2/2015 about supervision and policing tourist services/recreations/entertainment and internet services, cafes/other similar services and sports facilities in Banda Aceh city. All the three regulations restrict women's mobility in several ways as discussed in chapter 4. Thus, within this discourse, the government uses its legal power to regulate, restrict and exclude women within time and space.

This research argues the codification of *shari'a* in Aceh has contributed to the perpetuation of hegemonic masculinity which disseminates social inequalities within the society. Through all these stages, the state has played a fundamental role in constructing and reconstructing gender ideology. This thesis also argues that the codification of *shari'a* has homogenised the interpretation of religious text as the law is claimed to be based on the Quran and hadith. The government monopolises religious text interpretation and disregards divergent interpretation which used to be common amongst jurists in the past. Finally, the establishment of some institutions to ensure the enactment of *shari'a* regulations aims to preserve the state control and power over its people.

2. How is punishment conducted on those who do not follow the local codification of *shari'a*?

There are two main forms of punishment mentioned within Aceh's codification of *shari'a*, which are *hudud* in form of public caning ceremony and *ta'zir*. *Ta'zir* is a form of punishment that is not mentioned in the religious texts, so this form of penalty is at the discretion of the judge (Mir-Hosseini and Hamzić, 2010). According to *Qanun Jinayat* no. 6/2014 there are four primary forms of *ta'zir*: caning, fine, imprison and restitution (money or other form of property). Additionally, the law also mentions seven other additional forms of *ta'zir* including: 1) re-education by the state; 2) restitution by parents; 3) returned to the parents; 4) marriage termination; 5) revocation of permits and rights; 6) confiscation of certain items and; 7) social work. Amongst all type of punishment, *hudud* is the most renowned one and often described as one form of *shari'a* in Aceh. Thus, this thesis focuses on *hudud* punishment or the public caning ceremony.

In chapter 5, I discussed the practice of the caning ceremony. This thesis

argued that the form and enactment of the punishment is gendered. Men are expected to stand and women kneel. This different treatment perpetuates the idea that women are weaker and subservient to men. It also reproduces the concept of masculinity and gender hierarchy within the society.

The public caning ceremony punishes people in two ways: physically by torturing the body and psychologically by shaming them in public space. During the public caning ceremony people are brought to a public stage to accept their punishment. The person in authority reads all their personal information into a loud speaker, the criminal/moral offence conducted, as well as the punishment received. The government claims that the ceremony is designed to help those convicted towards *taubat nasuha* or sincere repentance, shame them and therefore, prevent them from making the same mistake in future, and the same time it could be a reminder for others not to breach the rules. This way, the government also exhibits its power and domination over people.

Through the public caning ceremony, the person convicted experiences physical punishment as regulated in the *qanun* as well as social punishment from the society, being shamed in public during the ceremony and in the official media as well as on social media by those who have watched and recorded the event, could have a permanent impact.

During the ceremony, people treated women differently, they were subject to more verbal abuse and humiliation than men. Some people in the audience shouted at women that they had embarrassed their mother or the village they belong to. Women often seen as the guardian of morality (Collins and Bahar, 2000), thus breaching moral values and their parents will also be seen as failing to teach good moral values to their daughters.

The public caning ceremony also highlighted the use of violence by the government as a legitimate method to punish those who breach the law. Through this, government transfers fear to people, to remind and warn them of what will happen if they do not follow the order. Additionally, this could also be used as justification by some vigilante groups to use force and violence in the name of upholding *shari'a*.

3. How do women respond to the *shari'a* regulations and how do they perform their agency within the society?

Throughout this whole thesis, I have argued that the *shari'a* application in Aceh regulates women more than men. However, this thesis also aimed to investigate how women responded to *shari'a* and how they perform their agency. This thesis contributes to the theoretical debates regarding women's agency. Adopting Mahmood (2005) concept that acknowledges diverse forms of agency, this thesis also challenged the normative liberal assumptions of women's agency which often defines it solely as a form of resistance. This thesis highlights how women negotiated their identity to perform agency, to shape and reshape the norms (chapter 6).

This thesis demonstrated various forms of agency performed by women in Aceh, such as donning the veil, resisting government apparatus during dress raids, teaching progressive values to children, or even challenging male dominated institutions to gain some space for women. In chapter 6, I discuss various reasons why women choose to wear or not to wear the veil, and show that it is not necessarily a form of subjugation or homogenising tendency due to government *shari'a* regulation. Some consider the veil as part of their identity and some claim they have received *hidayah*, guidance from God, to make them pious and become a better person. There are also women who refuse to wear the veil and resist arrest, sometimes using religious discourse to negotiate their position.

This thesis also showed how women use agency to negotiate with patriarchal values, such as the role of men as *imam* or leaders. This negotiation provided them with some opportunity to challenge the dominant hegemony by opening space for women entering strategic positions in a customary institution. This negotiation meant their voice could be heard and at the same time they also contributed to the destabilising, constructing and reconstructing the norms, through a non-confrontational way.

This thesis concludes that despite many restrictions under local *shari'a* regulations, women in Aceh showed ways to negotiate their identities to perform agency, challenge the dominant hegemony and contribute to the construction and reconstruction of norms.

7.2 Significance of the Study and Research Contribution

This research is based on six months' ethnography fieldwork and involved looking at the local codification of Islamic law (*qanun*, GI, GR and CMI) in Aceh as well as the

practice of *shari'a* in everyday life. In analysing the data, this research was informed by CGT and CDA. In using CGT, analysis and development of theories were conducted after data collection, thus resulted in a grounded findings developed inductively from the data gathered.

CDA aims to understand the unequal power relations and how domination and inequality is performed, produced and maintained in society (Van Dijk, 2001). In CDA it is important for the researcher to see a connection across text, context and the sociocultural practice. In this research, CDA helped me to analyse how the discursive practice within the application of *shari'a* is preserved and maintained through text and various forms of communication in everyday life, verbal or non-verbal. This study showed how language, which sometimes seems neutral does indeed contain gender bias (see chapter 4 about *Qanun* no. 11/2002).

CDA and CGT requires a close reading and revisiting of the data, as well as memo writing which helped me thoroughly understand it, see emerging themes and identify the dynamic within the application of *shari'a*. Thus, this approach could also be useful and beneficial for future research in other topics or fields.

This research is a contribution towards discussion regarding Islamic law, particularly outside the Middle Eastern context. The popularity of Islamic law has been growing in the last few years, not only in other provinces in Indonesia, but also in the neighbouring country in Southeast Asia, particularly Malaysia and Brunei Darussalam. The two countries have also conducted visits to Aceh to learn the implementation of *shari'a* in this province. This study was necessary, considering Indonesia is the biggest Muslim country in the world, and was once known as 'the Smiling Face of Islam'. However, the adoption of *shari'a* regulations in Aceh and some other provinces in Indonesia through local regulations or *Perda*, has transformed the face of Islam in this country. *Perda shari'a* has become a popular narrative for many political parties to gain people's support in the Muslim majority nation. The "Islamization of Politics" (Buehler, 2016) in Indonesia has not only brought religious narrative to the legislation system, but also perpetuates restrictions on people's bodies, particularly women, as well as intolerance towards some groups/people such as Ahmadiyah followers and the LGBTQ community. I would argue the adoption of *shari'a* regulations will lead to the increasing of vigilante groups as has been the case in Aceh. Thus, government and policy makers, especially in a democratic country like Indonesia, need to study further the codification of religious text into a legal system.

As the largest Muslim country, Indonesia could also play a massive role to play in discouraging the homogenisation that is going on in Aceh and other neighbouring countries.

Future research could also study how policy makers can accommodate diversity within religious text exegesis, to give people options and at the same time revive interest and debate regarding Islamic knowledge, to achieve the fundamental goal of Islam, that is *rahmatan lil-'alamin*, (mercy to all creation).

The codification of *shari'a* in to law in the modern day has neglected diverse interpretations of Islamic texts and acknowledges only one single interpretation. As a result, *shari'a* is seen as set of rules that control people in various aspects of everyday life, practices uncivilised punishment, and subjugates women. This only perpetuates western hegemony narratives which often portray Islam as male-dominated and oppressive towards women. Therefore, Islamic scholars and jurists need to bring about discussions about *shari'a* and diversity within Islamic text interpretation.

As mentioned earlier, this research is informed, among other things, by feminist postcolonial theory. Thus, this thesis does not aim to universalise all women's experiences in Aceh, instead I emphasise various experiences and ways women deal with challenges they face that open up opportunities for change. Women respond to *shari'a* regulations in various ways, thus their experiences cannot be generalised as one single category. This research provides an alternative to the definition of women's agency, and recognises its multiple forms. Agency is not only a form of resistance, but also various ways where women negotiate their identities or even accept some patriarchal values, in order to give them space to destabilise, construct and reconstruct the norms. It is also important to engage men in women's empowerment projects. In a society with strong patriarchal values where men's voices are significant, to get them participating and supporting the idea of gender equality is essential.

7.3 Limitations and Future Research

This research only studies six local regulations (two qanun, one GR, One GI, and two CMI), further research could investigate more regulations such as *Qanun* No. 8 (2014) about the main points of Islamic Law, or some more local regulations in other town/cities in Aceh.

This study has investigated and presented data and findings regarding *shari'a* and women as a group that are regulated the most within the society. Further studies could also examine other groups in the society that might not even be acknowledged or accepted, such as LGBTQ people. Future research might also want to focus on male actors, particularly as one of the participants in this research described men being “like dogs and women are bones”. Within this narrative, women are seen as passive objects, the one without good morality or the seductress and men as active agents (chapter 4), however it could be interesting to see men’s perspective as being explicitly portrayed as incapable of controlling themselves.

Finally, This thesis has shown within the contemporary practice of *shari'a* the codification of religious text has homogenised its interpretation. Future research could expand beyond Aceh, particularly following the increase of *shari'a* regulation elsewhere, as mentioned above³² as well as the effects of increased homogenisation of religious text interpretation which transformed into law.

³² See: <https://kumparan.com/kumparannews/sebelum-terapkan-rajam-lgbt-brunei-pelajari-syariat-islam-di-aceh-1554367327591948151> and <https://bandaacehkota.go.id/berita/5644/malaysia-pelajari-penerapan-syariat-islam-di-banda-aceh.html>

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